Vol. II

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]32

WILLIAM R. WARNER & COMPANY, PETITIONER,

vs.

ELI LILLY & COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 4, 1923.

CERTIORARI AND RETURN FILED JULY 21, 1923.

(26,812)

(28,812)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 322.

WILLIAM R. WARNER & COMPANY, PETITIONER,

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ELI LILLY & COMPANY.

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VOLUME II.

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IN THE

District Court of the United States,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

In Equity. No. 1355.

THE ELI LILLY AND COMPANY,
Plaintiff,

vs.

WM. R. WARNER & COMPANY,
Defendant.

Washington, D. C., June 23, 1916.

Francis Rawle, Esq.,
West End Trust Bldg.,
Philadelphia, Pa.

Dear Mr. Rawle:

Please take notice that on Wednesday, June 28, 1916, at 10 A. M., before Charles E. Riordon, Special Examiner, at the Hotel Astor in the City of New York, N. Y., I will begin the examination of witnesses in rebuttal on behalf of plaintiff in the above entitled cause.

The witnesses I expect to call are as follows:

Samuel H. Bell, J. H. Weber and Charles H. Ege, of Reading, Pa.; Maurice W. Watson, of Bristol, Pa.; C. S. Lebs, William Cline and Robert J. Groves, of Philadelphia, Pa.; E. R. Peabody, of Boston, Mass.; Henry B. Smith, of Newark, N. J.; Edgar B. Allen and Mrs. Allen, of Norfolk, Va.

It will probably be necessary to adjourn to Norfolk, Va., for the purpose of taking the depositions of the last two named witnesses, and it may be necessary to adjourn to Washington, D. C., to get the depositions of some of the other witnesses named. It is possible that some of the witnesses named may not be able to appear at this time, and if so, their depositions will be taken later.

I am getting together a list of other witnesses in other localities, which I will submit to you as promptly as possible.

Yours very truly,

E. W. Bradford,
For Plaintiff.

IN THE
DISTRICT COURT OF THE UNITED STATES,
Eastern District of Pennsylvania.

December Term, 1914. No. 1355.

IN EQUITY.

ELI LILLY COMPANY,

vs.

WILLIAM R. WARNER & COMPANY.

Ernest W. Bradford, Esq.
Dear Sir:

I wish to give you notice that I shall object to any testimony offered in rebuttal which should have been produced on your prima facie case and particularly to the testimony of any witnesses as to alleged improper suggestions to druggists and others by defend-

ant's salesmen; whether such testimony relates to transactions already referred to in your prima facie case or to alleged interviews between any of your witnesses and any of defendant's salesmen not referred to in your prima facie case.

FRANCIS RAWLE.
June 24, 1916.

IN THE
DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

December Term, 1914. No. 1355.

IN EQUITY.

THE ELI LILLY AND COMPANY, a Corporation,
Plaintiff,

vs.

WM. R. WARNER & COMPANY, a Corporation,
Defendant.

PLAINTIFF'S PROOFS IN REBUTTAL ON FINAL HEARING.

New York, N. Y., June 28th, 1916, 10 A. M.
Hotel Astor.

Testimony taken on behalf of the plaintiff in rebuttal in the above entitled cause, pursuant to notice hereto annexed, before Charles E. Riordon, Special Examiner, commencing Wednesday, June 28th, 1916, at 10 A. M., at Hotel Astor, New York, N. Y.

Present:

MR. E. W. BRADFORD, on behalf of plaintiff;
and
MR. FRANCIS RAWLE, on behalf of defendant.

CARL H. EGE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Carl H. Ege; age 31,; Reading, Pa.; retail druggist.

Q2. How long have you been in the retail drug business at Reading?

A. Seven years.

Q3. Do you know Mr. S. J. Hagaman?

A. Yes, sir.

Q4. What house does Mr. Hagaman represent?

A. Wm. R. Warner & Co., of Philadelphia.

Q5. Has Mr. Hagaman ever solicited from you an order for Wm. R. Warner & Co.'s products?

A. Yes, sir.

Q6. Are you familiar with Mr. Hagaman's "sales talk" and methods of soliciting orders?

A. One experience I had.

Q7. Mr. Hagaman when called as a witness for defendant in this case testified that it was contrary to the policy of his house to even make a suggestion that their items might be used by the druggists as replacers for items of other houses. I call your attention particularly to Qs. 24 and 25, pages 449, 450, defendant's record, and ask you to read these portions of his testimony and then state whether or not said testimony is consistent with the practices of Mr. Hagaman during your experience with him as a salesman?

By MR. RAWLE: The question is objected to as leading, because the only proper question to ask the witness is as to what took place or what was said between him and Hagaman on the one occasion with which he had experience; because the

question embodies in part the inference of counsel from Hagaman's testimony and is not confined to a statement in the question of the exact words of Hagaman's answer to those two questions, and as not proper for rebuttal.

To ask the witness whether Hagaman's testimony referred to in the question is "consistent with the practices of Mr. Hagaman during your experience with him as a salesman" is objected to as grossly irregular and improper. And notice is given of motion to strike out the question and any answer the witness may give.

A. Yes, on two occasions during this trip that he made to my place he called my attention to where I might save money in buying and offering for sale a preparation of bromo-soda over another well advertised article similar to it, and also their perfume called "Oriana" over a well-known perfume.

Q8. What have you to say then concerning the consistency of Mr. Hagaman's practices with his testimony. I call your attention that you begun your last answer with a "Yes." Is this what you meant?

By Mr. Rawle: The question is objected to as grossly leading and irregular. Also objected to because the opinion of the witness as to consistency is not evidence and because the only question proper to ask the witness is as to what Hagaman did or said in his presence.

A. No, what I meant to say was "No." That his testimony which I read is entirely contrary to the method in which he approached me at the time he called on me.

By Mr. Rawle: The answer is objected to for the same reason and notice to strike out both question and answer is given.

Q9. When did this call by Mr. Hagaman take place?

A. I do not know the date. To the best of my recollection it must be about four and a half years ago.

Q10. Have you purchased goods from him since?

A. Not from Mr. Hagaman; from their salesmen.

Q11. Have you any reason for not purchasing goods from Mr. Hagaman?

By Mr. Rawle: The question is objected to as irrelevant, immaterial, as not proper rebuttal, and because the only evidence proper to be given by the witness is as to what Mr. Hagaman said or did in his presence.

A. The only reason I have is that at the time he called on me he induced me to buy many more goods than I had felt inclined to buy at that time.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiving objections):

XQ12. Who arranged with you to come here to testify?

A. Mr. Robert Groves.

XQ13. Are you in active business now in Reading, Pa.?

A. Yes, sir.

XQ14. How long will you be away from your store on this business?

A. One day.

XQ15. Who is paying for your time and expenses?

A. I understand it is the Eli Lilly & Co.

XQ16. With whom did you make such arrangement?

A. With Mr. Groves.

XQ17. Did he promise you that Eli Lilly & Co. would pay you?

A. Well I understood him to say that; yes, sir.

XQ18. What did he say?

A. I just can't recall the words, but he said that the mileage and incidental expenses would be paid by Eli Lilly.

XQ19. When are you going home?

A. Late this afternoon.

XQ20. When did Groves make this arrangement with you?

A. On Monday evening last.

XQ21. Before Groves called on you had you talked with any one else connected with Eli Lilly & Co. about this case?

A. I never knew anything about the case before Mr. Groves approached me.

XQ22. Have you had any special business connection with Groves?

A. Never.

XQ23. Did you know him?

A. I have known him for seven years.

XQ24. In what connection had you known him for seven years?

A. First as salesman for Wm. R. Warner & Co., of Philadelphia, and then as a representative for Eli Lilly & Co.

XQ25. For how long has he been a representative of Eli Lilly & Co., the plaintiff?

By Mr. Bradford: Objected to as incompetent and irrelevant.

A. That I can not answer.

XQ26. How long have you known Groves as acting as salesman for Eli Lilly & Co.?

A. I think he has represented Eli Lilly at least two years, to the best of my knowledge.

XQ27. In the territory of which Reading is a part?

A. Yes, sir.

By Mr. Bradford: No objection is made to the obviously impertinent, irrelevant and incom-

petent questions on cross-examination. The information called for being entirely welcome to the defendant but in order to save time and possibly expedite depositions that are to follow, counsel for plaintiff acknowledges that the several witnesses to be produced here are brought here at plaintiff's expense, it being selected as possibly the most convenient and central point to examine several witnesses who will be called, and he believes the expense will be less than if counsel with the Examiner attended the witnesses at their several places of residence. If any question by counsel for defendant implies or seeks to imply that any witness is being paid for his testimony the question and implication are resented and absolutely denied.

CARL H. EGE.

JOHN H. WEBER, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. John H. Weber, age 29, Reading, Pa.; retail druggist.

Q2. How long have you been in the retail drug business at Reading?

A. I have been a proprietor six years and six years previous as a clerk.

Q3. Do you know S. J. Hagaman?

A. Yes, sir.

Q4. When did you meet him and under what circumstances?

A. I believe in 1911 as a salesman for Wm. R. Warner & Co.

Q5. Did Mr. Hagaman ever solicit your order for the products of Wm. R. Warner & Co.?

A. Yes, sir.

Q6. Please give as near as you can Mr. Hagaman's "sales talk" in soliciting your order?

By Mr. Rawle: The question is objected to as not proper rebuttal and because the only proper question to ask the witness is as to what Hagaman said at a particular interview.

A. There was one definite visit in May, 1911 that I recall several items mentioned in which he suggested several preparations that could be bought cheaper and sold in place of proprietary preparations on the market.

Q7. Will you mention one or two of the items referred to?

By Mr. Rawle: Same objection.

A. Fluid Viburnum Compound in place of Hayden's Viburnum Compound; Pitcher's Castoria in place of Fletcher's Castoria; Triloids in place of Diamond Brand Antiseptic Tablets. They are the only definite items I remember.

Q8. Mr. S. J. Hagaman has been called as a witness on behalf of defendant in this case. I ask you to read from Mr. Hagaman's deposition Qs. 10 and 11 on page 132 and Qs. 24 and 25, on pages 449 and 450 of defendant's record, together with Mr. Hagaman's answers, and state whether or not Mr. Hagaman's practices and methods in his efforts to sell you goods are consistent with the testimony he has there given?

By Mr. Rawle: The question is objected to as leading because the only proper question to ask the witness is as to what took place or was said between him and Hagaman on any particular occasion; because the witness's function is to testify to facts only and not to give his opinion as to whether or not Hagaman's practice was consist-

ent with Hagaman's testimony. Notice is given of motion to strike out the question and answer given thereto.)

A. I cannot say definitely if the substituting preparations was insinuated to be sold when a call was made for a definitely named article, but I think Mr. Hagaman's statements endeavored me to attempt the sale of items in place of known proprietary preparations through stating they were the same.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ9. Please point out on the printed record you have just had in your hand what questions and answers of Hagaman you read before answering the question?

A. I read on page 132 Q11; page 449, Q24, and page 450 I read Q25.

XQ10. Turn to page 449 of Hagaman and state whose testimony is printed on the last twelve or fifteen lines of that page, immediately following the asterisks?

A. R. J. Groves.

XQ11. Are there any proprietary medicines in your shop as to which you carry in stock the particular proprietary medicine of more than a single manufacturing house; that is, do you carry two or more of a kind of what is substantially the same proprietary medicine?

By Mr. Bradford: Objected to as not proper cross-examination as incompetent, irrelevant and immaterial.

A. In pharmaceutical preparations of known formulas we naturally have duplications in manufacturers. In proprietary preparations of unknown formulas duplications are not carried.

XQ12. Please define proprietary preparations?

By Mr. Bradford: Same objection.

A. Proprietary preparation is a secret formula of a single manufacturer in the broadest sense of the term.

Pharmaceutical is a preparation of a known formula usually United States Pharmacopoeia or National Formulary and can be put up by any manufacturer.

XQ13. Then are there not many proprietary medicines according to that definition which are sold by different drug houses and are substantially the same in therapeutic effect whether they are sold under the same name or not?

By Mr. Bradford: Same objection.

A. I believe manufacturing drug houses usually do not imitate a secret proprietary remedy.

XQ14. Do you call Fluid Viburnum Compound or Hayden's Viburnum Compound proprietary medicines?

By Mr. Bradford: Same objection.

A. I would only call Hayden's Viburnum Compound a proprietry medicine.

XQ15. Have you carried them both in stock?

By Mr. Bradford: Same objection.

A. Yes, sir.

XQ16. Would you call Fletcher's Castoria or Pitcher's Castoria, proprietary medicine?

By Mr. Bradford: Same objection.

A. I believe I would, each under its own name.

XQ17. Have you carried them both in stock?

By Mr. Bradford: Same objection.

A. Yes, sir.

XQ18. Name any other proprietary medicines with which you stock products of more than one house?

By Mr. Bradford: Objected to for the reasons before given and for the further reason that

this line of cross-examination is a gross abuse of the privilege of cross-examination outside of the courtroom and unnecessary use of plaintiff's time in an effort to introduce evidence that if competent at all should have been produced by defendant in its own time, and unnecessary increase of plaintiff's expenses in taking its proofs, and as wholly out of place.

A. Compound Syrup of Figs and Elixir of Sena with California Syrup of Figs. I do not recall at this moment any other true proprietaries. There are certainly a very few.

XQ19. Who arranged with you to come here to testify?

A. Mr. Bradford.

XQ20. Who first spoke to you about it?

A. Mr. Groves.

XQ21. Who is he?

A. Mr. Groves is a salesman for Eli Lilly & Co.

XQ22. How long have you known him as such?

By Mr. Bradford: Objected to as immaterial.

A. At least several years or ever since the commencement of that position, I have no means of knowing, I knew him before.

XQ23. When did he first speak to you about coming here?

A. Possibly a month ago, possibly a little longer, but not much.

XQ24. And he arranged for you to see Mr. Bradford?

By Mr. Bradford: Objected to as absolutely immaterial and irrelevant. Mr. Bradford states for the information of counsel that he went to Reading to see Mr. Weber and Mr. Bell another witness who will be presently called, possibly two weeks ago, on information from Mr. Groves that these gentlemen would probably be willing to testify for us in this case.

A. Yes, sir.

XQ25. In answer to Q7 you mentioned Triloids. Don't you remember that before the May interview in 1911 you had Triloids, Wm. R. Warner & Co., in stock?

A. I do not recall having them in stock previous to that time.

XQ26. I hand you an order sheet of Wm. R. Warner & Co., with the selling date of November 2, 1910, and ask you if you remember giving that order to Wm. R. Warner & Co., and whether it does not include Triloids?

A. It does include Triloids. I do not remember the order.

XQ27. Have you any doubt that that is the order which you gave Wm. R. Warner & Co. at that time, or which your then drug store gave?

A. I believe the order is accurate and I may have been mistaken on the previous questions concerning the time of the original purchase of Triloids on account of not being carried regularly in stock.

XQ28. You rather think now that prior to May, 1911, interview with Hagaman you had at some time Triloids in stock? Is that correct?

A. I believe so after having my mind refreshed with a copy of a previous order.

XQ29. On November 2, 1910, were you connected with Rentchler's pharmacy in Reading, and if so as employee or proprietor?

A. I had been manager of the Rentchler pharmacy and became full proprietor possibly about that time, about November.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ30. I note that the copy of the bill shown you by counsel for defendant bears a stamp "New

Customer." Was this your first order given to this house?

A. I can't state definitely because I do not remember the bill, but it very likely was the first order.

RDQ31. Do you recall definitely the statements by Mr. Hagaman respecting Triloids as before testified to by you, irrespective of the date of this bill or any other bill?

By Mr. Rawle: Objected to as not proper re-direct-examination.

A. I do not recall definite statements about Triloids.

RDQ32. You stated in answer to Q7 that Mr. Hagaman, among other things, named Triloids in place of Diamond Brand Antiseptic Tablets. My question is, is your recollection clear as to this fact without reference to the date of his visit?

By Mr. Rawle: Previous objections repeated. Also as leading.

A. About all I can recall is that on informing Mr. Hagaman that Diamond Antiseptics were carried in stock and that he then sold me Triloids. I don't recall any of the argument.

Re-cross-examination.

By Mr. Rawle:

RXQ33. Do you know the difference between the formulæ for Triloids and Diamond Antiseptics?

By Mr. Bradford: Objected to as immaterial, irrelevant and not cross-examination.

A. I believe all manufacturers make bichloride of mercury tablets to contain a definite amount to make a certain percentage solution with different amounts of water, such as one quart and two quarts.

RXQ34. Don't you know that they have a differ-

ent base; that is, that the Triloid has a muriate of ammonia base and the Diamond has a citric acid base?

By Mr. Bradford: Same objection.

A. I do know that they contain those substances added to make the salt more soluble, but are not the base of the tablets.

RXQ35. Don't they differ in the respect I have mentioned?

By Mr. Bradford: Same objection.

A. They do.

RXQ36. And the Triloids are in the form of triangles and the Diamond in the shape of diamonds?

By Mr. Bradford: Same objection.

A. Yes, sir.

RXQ37. And Triloids are put up in a triangular bottle and Diamond in a fan-shaped bottle in horizontal section?

By Mr. Bradford: Same objection.

A. Yes, sir.

RXQ38. And in selling Triloids and Diamond you sell them in the original bottles, don't you?

By Mr. Bradford: Same objection.

A. Yes, sir.

John H. Weber.

After Recess.

Charles S. Lebo, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford (at 2.40 P. M.):

Q1. Please state your name, age, residence and occupation?

A. Charles S. Lebo, age 35; Philadelphia, Pa.; retail druggist.

Q2. How long have you been located in Philadelphia and where were you employed prior to your Philadelphia employment?

A. About four years and a half in Philadelphia and prior to that time about four years with Mr. Samuel H. Bell, of Reading, Pa.

Q3. What was your position with Mr. Bell?

A. I was head clerk for Mr. Bell.

Q4. Do you know Mr. S. J. Hagaman, and if so, where did you meet him and under what circumstances?

A. I knew Mr. Hagaman when he called on Mr. Bell for Wm. R. Warner & Co.

Q5. Did Mr. Hagaman ever solicit orders for Wm. R. Warner & Company's products, either of you direct or of Mr. Bell in your presence?

A. He did not solicit orders direct but he did from Mr. Bell in my presence.

Q6. Do you recall Mr. Hagaman's "sales talk" in his efforts to sell Mr. Bell the Warner goods and if so, please state the substance as near as you can of such talks?

By Mr. Rawle: Objected to as not proper for rebuttal and because the witness has not yet stated when and where the interview took place and because the witness is asked to state the substance and not to state what was said.

A. I can't recall many instances, nor just what was said, but he seemed to lay great stress on the fact that the Warner goods could be sold in preference to higher price articles of the same kind and could be used in substitution you might say.

Q7. How many times did Mr. Hagaman talk with Mr. Bell in regard to the purchase of goods in your presence and when were these talks, as near as you can remember?

A. Well, they were during the four years previous to 1912, almost every time he came into the store during that time.

Q8. Do you recall any special items discussed by Mr. Hagaman and represented by him to Mr. Bell as stated in your last answer?

A. I recall two, one was Pills of Aloin, Belladonna, Strychnine and Ipecac, which could be sold in preference to Lapactic Pills, at a greater margin of profit for the druggist. Another was Triloids which could be sold in preference to Diamond Antiseptics.

Q9. What kind of a store in respect to size is conducted by Mr. Bell in Reading?

A. It is a very large store and carries a very large stock.

Q10. How does it rank and compare with the other drug stores of Reading?

A. I always considered it the largest patent medicine store in Reading.

Q11. How does Mr. Bell rank in the community of Reading?

By Mr. Rawle: Objected to as immaterial and not proper for rebuttal.

A. In a business way he is considered very aggressive and up to date and reliable.

Direct examination closed at 3 P. M.

Cross-examination.

By Mr. Rawle (without waiver of objections, at 3 P. M.):

XQ12. Please state what Mr. Hagaman said at any of these interviews from four to eight years ago?

A. Well, I can't remember his exact words, but the impression he left with Mr. Bell and also with me, as a clerk, was that we could substitute these two items for the others.

By Mr. Rawle: All but the first clause is objected to as not responsive, and because it gives Mr. Bell's impressions and those of the witness.

By Mr. Bradford: The impressions made upon Mr. Bell and the witness by Mr. Hagaman's talk are submitted to be material.

XQ13. H~d you been selling lapactic pills at that time?

A. Yes, we were selling lapactic pills.

XQ14. And Hagaman asked you to sell his pills instead of lapactic pills, did he not?

A. He suggested that we switch the customers from lapactic pills to the other pills.

XQ15. By persuading the customer?

A. Yes, by getting the customer to take the other pills.

XQ16. And the same way with Triloids?

A. Yes.

XQ17. Did you ever stock his Aloin pills and his Triloids?

A. Yes, Mr. Bell stocked both of them.

XQ18. And he also stocked at the same time lapactic and Diamond Tablets?

A. Yes, sir.

XQ19. And didn't he stock a great many preparations where he had the products of two or more houses for preparations that were substantially the same?

By Mr. Bradford: Objected to as not cross-examination and as immaterial and irrelevant.

A. He did, yes.

XQ20. Give me an approximate idea of how many; were there a dozen?

By Mr. Bradford: Same objection.

A. No, there were only a few; of the pills there was the Warner package and the lapactic pill package, of the same size and shape.

XQ21. Did you carry both Pitcher's and Fletcher's castoria at the same time?

By Mr. Bradford: Same objection.

A. Yes, we carried both.

XQ23. Mention some other preparations of which you carried the makes of some other houses?

By Mr. Bradford: Same objection.

A. Well I can't mention any specific preparations. However, where there was a preparation put up by two different houses the packages were not usually the same size and shape.

XQ24. And there were a good many preparations put up by two different houses with which you stocked?

By Mr. Bradford: Same objection.

A. Yes.

XQ25. You say Mr. Bell is a business man of high position in Reading? Did you understand that Mr. Hagaman was making any dishonest offer or suggestion to him?

A. I don't think he really meant anything dishonest.

XQ26. What do you mean by the word "substitution" which you used when you said "used in substitution you might say"?

A. The pills themselves were the same size and could not be told one from the other if they were out of their original container and if put up in a plain box they could be easily sold when lapactic pills were called for.

XQ27. Do you swear that Hagaman said that to Mr. Bell?

A. No, I do not. I was talking about impressions and not what he said.

XQ28. Was Mr. Bell's drug store in the practice of putting up a different kind of pill than the one called for?

A. Samuel H. Bell, age 48, Reading, Pa.; retail druggist.

Q2. How long have you been in the retail drug business in Reading?

A. I began business December 13, 1902, and have been in it ever since up to the present time.

Q3. Comparatively speaking, do you carry a large or a small stock of goods in your store?

A. I have quite an extensive stock, my last inventory was $21,000.

Q4. Do you know Mr. S. J. Hagaman.

A. I do.

Q5. Please state the circumstances under which you have known him?

A. I have known Mr. Hagaman and to my recollection I can go back to about 1909, or in that neighborhood. He came in my store and represented himself as being the representative of Wm. R. Warner & Co., of Philadelphia, Pa. The purpose of his call was to sell me his goods.

Q10. In soliciting your order for the Wm. R. Warner & Co. products what representations did Mr. Hagaman make, respecting their items, and particularly as to the methods you might employ in disposing of them?

By Mr. Rawle: Objected to as not proper for rebuttal; also because the only proper question is to ask the witness as to when the witness saw Hagaman and what he said.

Notice to strike out the question and answer and all preceding like questions and answers is here given.

A. Mr. Hagaman, in the first place, never came by himself; always in company with one of their salesmen, and in trying to place an order Mr. Hagaman would place great stress on naming this, that or the other article which would be a good substitute for one of the standards. For instance, their A. B. S. & I. pill, gc round, would be a good pill to replace the la-

pactic pill of Sharp & Dohme. He then would state in what way to proceed in order to knock out the lapactic pill. Likewise their Elixir Pepsin and Caffein Comp. to replace Sharp & Dohme's panpeptic elixir, which is sold in bulk. I could name you a dozen or more of articles which would bear along that same line of substitution.

By Mr. Rawle: The answer is further objected to as not stating anything that was said.

Q11. Mr. Hagaman was called as a witness on behalf of defendant in this case. I show you and ask you to read Mr. Hagaman's answer to Q24, pages 449-450, defendant's record, and state whether or not Mr. Hagaman's methods and practices in soliciting your order for goods were consistent with the testimony which he there gives?

By Mr. Rawle: Objected as not proper for rebuttal because the witness is not asked to say what took place, because the witness is asked to state his opinion as to whether what was said was consistent with the quoted testimony of Hagaman, which is matter for the court and not for the witness. And because this evidence is merely cumulative of like evidence given on plaintiff's prima facie case and motion to strike out both the question and answer is made.

By Mr. Bradford: It is submitted that the evidence called for by this question is evidence tending to explain plaintiff's case as already made to sustain the credibility of plaintiff's witnesses and destroy the force of the evidence submitted by defendant and is clearly proper rebuttal.

A. My answer is that Mr. Hagaman's manner of placing or rather soliciting an order was decidedly inconsistent to his evidence.

By Mr. Rawle: Objected as such an answer to the question is inadmissible.

Direct-examination closed at 4 P. M.

Cross-examination.

By Mr. Rawle (at 4 P. M. without waiver of objections):

XQ12. Please direct your attention to any one interview with Hagaman and state what Hagaman said in trying to sell you goods?

A. Well, whenever Mr. Hagaman tried to sell me goods that would be one of his strong arguments. I would add to that in order that he might not overlook the familiar ones he would carry those in his pocket and readily make reference to them, how I could substitute the same for the standard. Knowing that I had the confidence of my trade it appeared to me that he placed extra stress on substitution, due to the fact that he was familiar of me being a good salesman back of the counter, thereby taking advantage of same, in that particular manner.

By Mr. Rawle: The answer is objected to as irresponsive and as stating inferences and not facts and motion will be made to strike it out.

XQ13. Please fix your mind on any one interview with Hagaman as to which you can give the approximate date and as to which you can state what Hagaman said to you and then state what he said.

A. As to approximate dating, my bills will prove that, which I fail to have with me at this time, but can furnish same whenever required. As to his expressions I have covered that.

XQ14. I now ask you to say what words Hagaman used at any interview?

A. In trying to place an order he would demonstrate. For instance (witness here takes from his pocket two packages of pills—one package Wm. R. Warner & Co., and one package Sharp & Dohme, and pours four pills from each bottle on the table) comparison would be his great talk in making the sale. You can just as readily sell that pill, (referring to the War-

ner pill) as the S. & D. pill, which will net you more profit.

XQ15. And that is what he said to you?

A. Yes, sir.

XQ16. Anything else?

A. Along the general lines of salesmanship, yes.

XQ17. Did you stock both of these pills?

A. I did.

XQ18. And carry them in stock for a considerable time or constantly? I mean what was your practice as to stocking both of these pills?

A. That is my original stock package, that I stocked ever since I opened store (referring to the Sharp & Dohme package). Now referring to the Warner package I stocked that at the solicitation of Mr. Hagaman. I have had them in stock ever since. As to substituting that is a thing that I do not tolerate in my business.

XQ19. You consider that substitution is dishonest business for a druggist?

A. Making that a standard practice, I do, yes, sir.

XQ20. Please define substitution?

A. Wilful substitution is deception to the customer.

XQ21. Is it passing off a given preparation of one house when a like preparation of another house is called for by a patient or a doctor on a prescription and without telling the customer over the counter or the doctor that you have done so or are doing so?

A. As I have before stated, substitution is deception to the doctor or customer. It is something that I positively do not allow. Therefore I have no occasion to tell the doctor or customer that such an act has been done.

XQ22. You say that the practice is one which you do not allow and that it is deception. Please now tell us what the act is that you do not allow and which you consider to be deception?

A. For instance, a doctor writes a prescription for panpeptic elixir (S. & D.) and I give him Warner's

Elixir Pepsin & Caffein Comp. I term that deceptive drug dealing, or dispensing. And that is what I mean I positively do not allow.

XQ23. Is that what Hagaman suggested to you that you should do, in order to persuade you to buy his product, aloin pills?

A. It is not what Mr. Hagaman said I should do, but it is what Mr. Hagaman said I could and would do.

XQ24. Did you tell him that you never did that or allowed it in your drug store?

A. I did. Mr. Hagaman is well versed with the methods of my store and more than once I have been disgusted and refused him an order for that reason alone. That being my very last refusal on his last trip, attending his persistency along those lines.

By Mr. Rawle: The answer is objected to as irresponsive and volunteered and as not stating facts. Notice to strike out is given.

XQ25. How many different houses make and sell pills similar in a therapeutic sense to Sharp & Dohme's lapactic pills?

By Mr. Bradford: Objected to as not cross-examination, irrelevant, immaterial and incompetent.

A. I don't know of any other house in a similar form. Some of those ingredients contained in these pills are put up by other houses in tablet form—excepting Sharp & Dohme and Wm. R. Warner & Co.

XQ26. Do you draw a distinction between the form of the pills of different houses?

By Mr. Bradford: This question and the preceding one are objected to as in no sense cross-examination and as irrelevant, incompetent and immaterial.

A. There is no other house that represents a pill similar to the one of Sharp & Dohme.

XQ27. What product does Eli Lilly & Co. put out

that is similar to this lapactic pill, S. & D., or substantially so, therapeutically?

By Mr. Bradford: Objection repeated.

A. I have never been approached on that by any of Eli Lilly's representatives. I however notice that on page 30 of their price list which you hand me they have a pill of a same formula however coated white and pink and not black to take the place in salesmanship of the S. & D. pill.

XQ28. Please look at the Lilly catalogue and tell me if these pills there referred to are not therein marked as being gelatin coated and as being either oval or round?

By Mr. Bradford: Objection before noted is repeated and the further objection is made to the continued abuse by counsel for defendant of his privilege of cross-examination outside of the court room by attempting to lug into the record evidence that if admissible at all is only admissible as evidence in chief for defendant. Further objection is made to thus wilfully consuming plaintiff's time and increasing plaintiff's expenses by this character of proceeding, in no sense cross-examination.

By Mr. Rawle: Defendant's counsel states in a word that he is pursuing this method of cross-examination for the simple reason that in his opinion it is proper for cross-examination.

A. According to the price list, yes.

XQ29. And it is the same formula as the lapactic S. & D.?

By Mr. Bradford: Same objection.

A. Yes, sir.

XQ30. What other houses have a similar pill?

By Mr. Bradford: Same objection.

A. I am not booking myself along that line at all.

A. Henry B. Smith; 44; 350 Montrose Avenue, South Orange, N. J., President of C. B. Smith & Co., wholesale druggists, formerly of 863 Broad Street, Newark, N. J., now at 57-59 Green Street, Newark, N. J.

Q2. At the taking of testimony by defendant in this case an exhibit was offered in evidence consisting of a bottle of "Syrup Chova Comp." under the label of your house. Please state whether or not this preparation has any considerable sale and where its sales and use are confined?

A. The sales are very slight in and around the territory of Newark, or in the vicinity of Newark.

Q3. Do you know about what quantity of this preparation is sold per annum by your house?

A. I can't answer that, but small would be a very correct answer. The quantity is very slight.

Q4. Can you state in gallons approximately?

A. I should judge approximately five gallons.

Q5. Is it sold outside of N. J.?

A. The only case I can recall to mind is the order we received from Wm. R. Warner & Co.

Q6. You are familiar with Lilly's preparation known as Coco-Quinine?

A. We are selling it.

Q7. Do you regard Syrup Chova Comp. as a similar preparation or one competing with Coco-Quinine?

A. I do not.

No cross-examination.

HENRY B. SMITH.

Adjourned until tomorrow, Thursday, June 29th, 1916, at 9.30 a. m. at same place.

New York, N. Y., June 29th, 1916—9.30 a. m.
Hotel Astor.

Met pursuant to adjournment.

Parties present as before.

EARL R. PEABODY, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD: (at 9.35 a. m.)

Q1. Please state your name, age, residence and occupation?

A. Earl R. Peabody; age 28; 17 Clermont Park, Boston, Mass.; salesman for the French Lick Springs Hotel Company.

Q2. Were you ever employed by Wm. R. Warner & Co., and if so, when, and in what capacity?

A. I have been employed by the Wm. R. Warner & Co., as a salesman in Massachusetts, from February, 1911, to January, 1912.

Q3. By whom were you employed on behalf of the Wm. R. Warner & Co.?

A. By Mr. S. J. Hagaman.

Q4. Were you instructed in the policy of the house by Mr. Hagaman?

By MR. RAWLE: Objected to as not proper for rebuttal, and because all such matters constitute part of the plaintiff's *prima facie* case.

A. What do you mean by that?

Q5. Mr. Sylvester J. Hagaman was called as a witness for defendant in this case, and in his deposition stated his methods of teaching the salesmen and the instructions given. My last question had for its purpose to inquire whether or not you were one of the salesmen so instructed and taught by Mr. Hagaman?

A. What were those instructions? I was one of the salesmen that were instructed by him when I entered the employ of Wm. R. Warner & Co.

Q6. I call your attention to Mr. Hagaman's answers to Qs. 7 to 13, inclusive, on pages 132 and 133, of Defendant's Record, and ask you whether or not Mr. Hagaman's methods of instruction and his instructions

to you were in accordance with his statements in this part of his testimony?

By Mr. Rawle: Same objections and further because the question is leading and because the only proper question is as to what Hagaman said to the witness.

A. Mr. Hagaman did not go through this salesman's Confidential and Manual with me as he states here that he does with others. He merely gave me to understand that this list contained lower prices than were in the regular catalogues.

Q7. Did he call your attention in any manner to the paragraphs headed "What a salesman should know" on page 86 and to the "Salesman's Creed" on page 87? I show you a copy of the "Salesman's Confidential and Manual" and call your attention to these pages, which are particularly referred to by Mr. Hagaman in his answer to Q9, page 132.

By Mr. Rawle: Same objections.

A. No.

Q8. Did any one representing the house ever call your attention to these pages?

By Mr. Rawle: Same objections.

A. No, sir.

Q9. How did Mr. Hagaman teach you to sell goods? I mean, in what manner and what were his teachings or instructions?

By Mr. Rawle: Same objections (except as to being leading).

A. On the Pfeiffer line it was a question of price compared with other lines, that they would pay more profit. In the pharmaceutical end of it that is the Warner and Searle & Hereth preparations he gave me no specific instructions any more than to watch him while he was making sales and use the arguments and methods that he used.

Q10. Did Mr. Hagaman travel with you in visiting the trade, and if so, how frequently?

By Mr. Rawle: Same objections.

A. Yes, two times, once when I started with the house and again later in the year.

Q11. I show you a list which has been introduced in evidence as "Plaintiff's Exhibit, Thurman Copy of Document No. 3", and ask you if this list was used by Mr. Hagaman in his instructions and if so, what use he made of it?

By Mr. Rawle: Same objections.

A. Yes, it was used by Mr. Hagaman and as replacers for advertised articles, that is the way I understood it, that these items of Warner's and Searle & Hereth opposite the advertised preparations were exact replacers for them.

Q12. Was or was not this a part of your regular equipment as a salesman?

By Mr. Rawle: Same objections.

A. I considered it a regular part of the equipment.

Q13. I also call your attention to Mr. Hagaman's answer to Q24, beginning on page 449 of Defendant's Record, the answer being on page 450, and ask you to state whether or not his instructions to you and his methods of salesmanship were consistent with the testimony there given?

By Mr. Rawle: Same objections and because the only proper question to ask the witness is as to what Hagaman said to him.

A. It is consistent with his testimony. As I understood the question it was, was it consistent with Groves.

By Mr. Rawle: Mr. Rawle wishes to note that between the first clause and second clause some remark was made by examining counsel, whereupon the witness added the last clause, beginning "As I understood".

By Mr. Bradford: Mr. Bradford desires to add that some remark was also made by defendant's counsel.

Q14. My question did not inquire concerning Mr. Groves' testimony but concerning the answer given by Mr. Hagaman to Q24, and I call your attention to the fact that the Groves testimony which you have referred to is a part of the question submitted to Hagaman and no part of Hagaman's answer to the question. Please read Mr. Hagaman's answer on page 450, and state whether or not his instructions to you, his teachings and his methods were consistent with the testimony given in this answer by Hagaman?

By Mr. Rawle: Same objections.

A. No. Mr. Hagaman's testimony in answer to that question is not consistent with instructions that he gave me.

Q15. Have you in mind any specific instances of practices by Hagaman in soliciting orders that are not consistent with the statement made by him in this answer? If so, please recite them.

By Mr. Rawle: Objected to as not proper rebuttal, the matter being obviously part of plaintiff's *prima facie* case and fully exploited by plaintiff therein.

A. I have seen Mr. Hagaman offer the S. & H. pill, Aloin, Bella Donna, Strychnine and Ipecac as a substitute or replacer for lapactic pills. He stated that they were the same composition, shape and size. Also the same with Alophen Pills and their preparation similar to that, opposite the name that appears on this list. I can give you more if you want them.

Q16. In soliciting orders for these goods were his methods a part of his instructions to you and intended for you to follow in selling the same goods?

By Mr. Rawle: Same objections and because the only proper question is as to what Hagaman said or did.

A. I understood them as such.

Q17. Did any other representative of the house of Wm. R. Warner & Co. ever travel with you as instructor or assistant, and if so, whom?

A. Yes, Mr. Charles E. McNulty.

Q18. How many times was Mr. McNulty with you?

A. Once.

Q19. I call your attention to Mr. McNulty's testimony as a witness in behalf of defendant in this case, particularly to his answers to Q9 to Q15, inclusive, on pages 95 and 96, respectively, of Defendant's Record, and ask you to read these questions and answers, and state what you have to say respecting the accuracy of his statements there made?

By Mr. Rawle: Same objections.

A. His answers to these questions are not consistent with the instructions he gave me.

Q20. What were the instructions he gave you?

By Mr. Rawle: Same objections.

A. When Mr. McNulty called me to the Essex Hotel in Boston, his first instructions to me were to send me to a Riker-Hegeman Drug Store, to purchase two bottles of Fletcher's Castoria. I did so and returned the two bottles to him. He immediately took them and poured their contents into the Dr. Hobson's Castoria bottle and stated that, "I guess they can't tell any difference now between the Dr. Hobson's and the Fletcher's". This bottle of Dr. Hobson's containing the Fletcher's Castoria he used in making sales during the time he was with me. In selling other preparations in the Hobson line I have repeatedly heard him mention competitor's names.

Q21. Describe his methods of using the bottle of castoria referred to in your last answer?

By Mr. Rawle: Objected to as not proper for rebuttal.

A. He would ask the prospective buyer to compare

the contents of the Dr. Hobson's castoria, with one of the original Fletcher's and ask him if he could detect any difference in taste or color in the two preparations and that the Dr. Hobson's contained more than the original Fletcher's, and that the margin of profit was greater.

Q22. Please explain what became of the bottle of castoria you have mentioned in your last answer?

By Mr. Rawle: Same objections.

A. It was taken from me by Mr. S. J. Hagaman.

Q23. Under what circumstances and when and why?

By Mr. Rawle: Same objections.

A. The exact date I can not remember, but it was during the last time that he worked with me. His reason for taking same he did not state. I would like to add to the answer to Q21 that the castoria mentioned was the one put out under the Pfeiffer Chemical Company label.

Q24. What was the trade name under which it was sold? The name used by them in place of the name "Fletcher" on the Fletcher castoria?

By Mr. Rawle: Objected to for the same reason and because it is well know that castoria is an open product, free to all to make and sell.

A. The exact name I can't state, but it was sold by Mr. McNulty as Pitcher's Formula Castoria. It has been five years since I handled that line.

Q25. I show you "Complainant's Exhibit, Thurman Pfeiffer Chemical Company Catalogue", and call your attention to page 153, and ask you if the package there illustrated is the package of castoria you refer to or similar to it?

By Mr. Rawle: Same objections.

A. Package No. 57 in this catalogue is the one referred to.

Q26. Do you recall any other specific items which in submitting to the prospective purchaser were compared by Mr. McNulty with items of other houses?

By Mr. Rawle: Objected to as not proper for rebuttal and as leading, and as irrelevant.

A. Yes, Hobson's Eczema Ointment compared with Cuticura Ointment.

Q27. Do you recall any other items which you observed Mr. Hagaman compare with items of other houses when soliciting orders, especially in the pharmaceutical line, liquids or elixirs?

By Mr. Rawle: Same objections and because the only proper question is as to what Hagaman said or did.

A. Elixir of Iron, Quinine and Strychnine with Wyatt's elixir of same thing.

Q28. How would Mr. Hagaman make his comparisons?

By Mr. Rawle: Same objections.

A. He would ask for graduates, pour a quantity of each into a graduate to be compared, and ask the buyer to compare them carefully.

Q29. How was this comparison usually made?

By Mr. Rawle: Same objections.

A. By the eye, color and taste.

Q30. Did he follow the same methods in respect to other items?

By Mr. Rawle: Same objections.

A. Not in all cases.

Q31. What was the chief requisite of salesmanship impressed upon your mind by Mr. Hagaman, if any?

By Mr. Rawle: Same objections.

A. There was no chief requisite that Mr. Hagaman impressed upon my mind any more than to make all the sales that I could.

Q32. Was this likewise impressed upon your mind by Mr. McNulty?

By Mr. Rawle: Same objections and as leading.

A. It was.

Direct-examination closed at 10.50 a. m.

Cross-examination.

By Mr. Rawle: (At 10.50—without waiver of objections)

XQ33. Did you have in your possession as part of the tools of your trade a copy of Wm. R. Warner & Company's "Salesman's Confidential and Manual"?

A. Yes, sir.

XQ34. Did you carry it with you always?

A. Yes, sir.

XQ35. Did it contain lists of articles, prices, terms, &c.?

By Mr. Bradford: Objected to as not calling for the best evidence, the book showing for itself what it is, and being already in evidence in the case.

A. Yes.

XQ36. And it was a necessary part of your equipment as a Warner salesman, was it not?

A. I presume it was, otherwise I would not have had it.

XQ37. Did you read the printed matter on your Confidential on the last five or six pages thereof?

A. I might have read part of it.

XQ38. Did you read a page on which is printed "What a Salesman Should Know" and the page on which is printed the "Salesman's Creed"?

A. I can't say whether I read it all or not.

XQ39. Inasmuch as this manual is called "Salesman's Confidential," didn't you suppose that it contained information which you ought to study?

A. I assumed that they all contained information, but I had no specific instructions to read all of them throughout.

XQ40. You had this manual in your possession for eleven months, did you not?

A. I had it during the term I was employed by the Wm. R. Warner Company.

XQ41. Have you any doubt that you read the two pages I have just specified?

By Mr. Bradford: Objected to as immaterial.

A. You mean did I or did I not read them. I don't understand the question.

XQ42. State whether or not you did, in those eleven months, read the two pages I have just specified?

A. I do not remember.

XQ43. Do you remember at any time receiving a card from the house about as big as your hand, having the "Salesman's Creed" printed at the top. I hand you "Defendant's Exhibit, Salesman's Creed 1910"?

A. Yes, sir.

XQ44. Did you read that?

A. Yes, sir.

XQ45. Do you remember about when you received it, whether at the beginning, in the middle or at the end of your employment in 1911?

A. I do not remember.

XQ46. What is your best recollection in regard to when you received that card from the house?

A. I could not state but it was during the time I was employed by them.

XQ47. After you left the employ of defendant in January 1912 what did you do next?

A. I was employed by the Nelson-Baker Company, Detroit, Michigan. I remained with them until June 1912. I have no records of the times and people with whom I was employed from then up to now.

XQ48. Can't you remember without a record?

A. Not all of them.

XQ49. Can you name any of them?

A. Yes. I can't tell the next employer that I worked for, but between then and June 1914 I worked for a retailer in Boston, Putnam, I don't know the initials, and I worked for the Willis H. Lowe Company, wholesale manufacturers of perfumes.

XQ50. How long did you stay with Baker?

A. Until June 1st, 1912.

XQ51. Where are you employed now?

A. With the French Lick Springs Hotel Company.

XQ52. How long have you been there?

A. Since June 1st, 1914.

XQ53. In what capacity?

A. Salesman for Pluto water.

XQ54. Do you travel in selling Pluto water?

A. Yes, sir.

XQ55. Then as a wholesale drug salesman you have had no employment since you left defendant except with Nelson-Baker & Company, which terminated in June 1912. Is that correct?

A. It is not correct. I stated previously that I worked for Willis H. Lowe, in the capacity of a traveling salesman, selling perfumes.

XQ56. Have you made any attempt in the last two or three years to get back into the selling of wholesale drugs? And especially with Wm. R. Warner & Co.?

By Mr. Bradford: Objected to as immaterial, incompetent and irrelevant and not cross-examination.

A. Not in the last two years, but about three years ago when Mr. Hagaman was looking for a man in Massachusetts and I was employed in the retail business I asked him what kind of an offer he would make me.

XQ57. Did you get the job?

A. I did not.

XQ58. Look at this Blue List. Is it not a list of items that you were most likely to sell, and given to you for convenience in selling?

A. Not necessarily, no. All of their items in their catalogues are subject to sale.

XQ59. Were there not as many as four or five thousand items in their catalogue?

A. I should think so.

XQ60. And the Blue List was rather a selected list from the catalogue, was it not?

A. A selected list I should say from two catalogues.

XQ61. Look at the left hand column in the Blue List. What class of articles do you find there?

A. Advertised articles in the majority of cases, or the principal specialities which the various pharmaceutical houses which manufacture them have placed special effort to create a demand for.

XQ62. Read down the left hand column on all four pages of the Blue List and give the names of any articles you find there which are either Wm. R. Warner & Company, or Searle & Hereth. Please note that Wm. R. Warner & Co., is there indicated by W. & Co. and Searle & Hereth by S. & H.

By Mr. Bradford: The question is objected to on the ground that the list being a part of the record and showing for itself it is the best evidence and as unnecessary repetition and as immaterial and irrelevant.

A. The items marked with a single cross on this list which you have handed me, on the left hand column, are either Wm. R. Warner & Company's or Searle & Hereth's goods. They are as follows:

Alka-Men-Thym. W. & Co.
Anti-Cold Tabs. Huyck's, Part 3. S. & H.
Anticongestus. W. & Co.
Anticongestus Comp. B. Q. part 2, W. & Co.
Anti Malarial Pills, Dr. Bonner's, Part 1, Warners.
Anti Malarial Tablets, Dr. Bonner's, Part 2. S. & H.
Antiseptic Solution, W. & Co.
Bromo Potash, W. & Co.
Bromo Soda, W. & Co.

Calolactose Tabs. White, part 3, S. & H.
Calolactose Tabs. Pink, part 3 S. & H.
Calolactose Powder, part 3. S. & H.
Castor Oil, Aromatized, White or Red, S. & H. part 2.
Castor Oil, Aromatic, White or Red, S. & H. part 3.
Cod Liver Oil Wine of Ext. of, with Malt and Hypophosphites, part 3, S. & H.
Cod Liver Oil Wine Ext. with Hypophosphites and Wild Cherry, part 2, Warner.
Digestive Powd. Comp. S. & H., part 3.
Eczemacide S. & H., part 3.
Elixir Salicylic Comp. W. & Co.
Elixir Tussis, part 3, S. & H.
Eonine Violets W. & Co., part 2.
Formin Comp. R. A., W. & Co.
Formin Comp. R. B., W. & Co.
Formin Laxative Comp. W. & Co.
Fragrant Violets, W. & Co., part 2.
Gauze, Iodoformal, W. & Co., part 2.
Glycerole-Hero Pinus Comp. W. & Co., part 2.
Gonichon, W. & Co., part 2.
Guajatonic, part 3, S. & H.
Hemonervine, S. & H., part 3, 298f.
Hepar Tabs. 302s, part 3, S. & H.
Hep-So-Lax, W. & Co., Salts Eff. part 2.
Hydralto, S. & H., part 3.
Ingluvin, Powder and Tab. W. & Co.
Iodoformal, W. & Co., part 2.
Lin-ne-mulsion, part 3, S. & H.
Lithia Water Tablets, 3 grs. W. & Co.
Lithia Water Tablets, 5 grs. W. & Co.
Antiseptic Eczema Lotion, W. & Co., part 2.
Methyl Compound, W. & Co., part 2.
Methylglobes, part 3, S. & H.
Ointment, Iodoformal, W. & Co., part 2.
Ointment, Reso-Iodo, W. & Co., part 2.
Pancreopepsine Comp. Compressed Tablets, part 2, W. & Co.

Quinaton, W. & Co., part 2.
Quin Coco, Lax. Part 3, S. & H.
Rheumaglobes, part 3, S. & H.
Santol, W. & Co., part 2.
Suppositories, Iodoformal W. & Co., part 2.
Syrup Infantile Laxative, W. & Co., part 2.
Syrup Phytolacca Comp. W. & Co., part 2.
Syrup Tolu and Heroin Comp. W. & Co., part 2.
Telectolin, part 3, S. & H.
Teko Ointment, part 3, S. & H.
Tono Sumbul Cordial, W. & Co., part 2.
Triloids, Antiseptic Tablets, W. & Co., part 2.
Tritica, part 3, S. & H.
Violets, part 3, S. & H.

XQ63. Look at the items on the left hand column of the list, "Derma Zema", "Lithia Formin Tablets" and "Santalglobes". Are these either Wm. R. Warner & Co. or S. & H. goods?

A. I don't remember.

XQ64. Don't you remember that "Derma Zema" was S. & H. goods?

A. I do not now. I might have at the time.

XQ65. Didn't you just say that "Derma Zema" was S. & H.?

By Mr. Bradford: Objected to as improper, immaterial and irrelevant.

A. I did not state whether it was S. & H. or W. and Co.

XQ66. Is it one or the other of them?

By Mr. Bradford: Same objection.

A. I presume it is.

XQ66. On page 3 of this list I find Lithia Formin Tablets and also Lithia Water Tablets marked W. & Co. and Lithia Water Tablets, 5 Grains, marked W. & Co. Were these Lithia Formin Tablets, W. & Co. goods.

By Mr. Bradford: Same objection.

A. I don't remember.

XQ67. On page 4 I find "Santol W. & Co.", I also find Santalglobes not marked. Do you remember whether Santalglobes was a Warner & Co. product.

By Mr. Bradford: Same objection.

A. I do not.

Recess at 12.10 until 2 p. m.

After Recess.

XQ68. You said that Hagaman first traveled with you, then McNulty did, and after that Hagaman did a second time. How many days were there between McNulty and the second time of Hagaman?

A. I don't remember the exact number of days.

XQ69. Give it approximately and state where McNulty joined you that second time?

A. I should say it was about three months between McNulty's visit and Mr. Hagaman's second. I met Mr. McNulty in the Essex Hotel, Boston, Mass.

XQ70. Is it not true that in the blue list the items which you have just read into the record from the left hand column do not have opposite them on the right column any article of a house other than Warner & Co., and Searle & Hereth?

A. It is.

XQ71. Do you remember how many competing drug houses whose goods you met in competition sold an article just like lapactic pills, which you say is the same as S. & H. pill A. B. S. & I.?

By Mr. Bradford: Objected to as immaterial, irrelevant and incompetent, and not cross-examination.

A. I do not remember how many.

XQ72. Were any of such competing drug houses putting out a similar product?

By Mr. Bradford: Same objection.

A. There might have been but I never saw it.

XQ73. Don't you know that lapactic and the A. S. B. & I. (S. & H.) are both open formula with the formula printed on the label?

By Mr. Bradford: Same objection.

A. No, I did not know that they were open formula.

XQ74. I hand you a package of lapactic pills, S. & D., and a package of A. S. B. & I., W. R. W. & Co. Please state whether those are the articles you have referred to in connection with Hagaman?

A. The lapactic pills are the article, but the ones that the Warner & Company pills that I referred to were in bulk and not in the original bottle.

XQ75. Did you have on your list a preparation of iron, quinine and strychnine?

By Mr. Bradford: Objected to as not cross-examination, as immaterial and irrelevant.

A. Please state what list you mean. I had several lists.

XQ76. Were you selling a preparation of that kind for Wm. B. Warner & Co.?

By Mr. Bradford: Same objection.

A. Yes, I attempted to sell this preparation, but with instructions that it could be used when another manufacturer's brand is specified.

By Mr. Rawle: The answer, except the first word, is objected to as unresponsive and volunteered and as showing a bias on the part of the witness.

By Mr. Bradford: The latter part of the objection is objected to as uncalled for and unjustified.

XQ77. What other competing houses whose prod-

ucts you ran against had an I. Q. & S. preparation, or something like it?

By Mr. Bradford: Objected to as not cross-examination, immaterial and irrelevant.

A. I think every pharmaceutical house makes an elixir of iron, quinine and strychnine.

XQ78. Don't most or many of the pharmaceutical houses make an A. B. S. & I. preparation?

By Mr. Bradford: Same objection.

A. Possibly but as I stated previously I never saw it.

XQ79. Isn't the I. Q. & S. an open formula?

By Mr. Bradford: Same objection.

A. I believe that it is.

XQ80. What is the cuticura preparation which you spoke of in connection with the Hobson eczema ointment?

A. As far as I know there is no similarity between the two. But what I referred to is the fact that it could be sold against cuticura ointment.

XQ81. And the A. S. B. & I. could be sold against lapactic. Is that right?

A. The question involved in this question is entirely different than in the other. I was stating that I had instructions to convince the druggist that he could use Warner & Co., A. S. B. & I. pills on prescriptions where lapactic S. & D. were specified.

XQ82. Who got you to come here?

A. I came through Mr. Thomas Taggart, Sr., whom I believe is a personal friend of Mr. Lilly's, at Mr. Lilly's request.

XQ83. Is he your employer and is he a Senator of the United States from Indiana?

A. Yes, sir.

By Mr. Bradford: For the information of defendant and the Court, I desire to state that I had an interview with Mr. Peabody in Boston a few

weeks ago for the purpose of ascertaining whether or not he would testify in this case. He refused, but finally said that if we obtained the permission of his employer he would be willing. This information I gave to Mr. Lynn, General Manager of Eli Lilly & Co. He wrote to Mr. Taggart, the President of the French Lick Springs Hotel Company. Mr. Taggart transmitted the letter to the General Manager of the company, with instructions if he saw no reason to object to write Mr. Peabody that he had their permission. This was done. Mr. Peabody absolutely declined to testify until this was done, stating as his reason that Wm. R. Warner & Co., always treated him all right and he did not care to be mixed up in this case.

Cross-examination closed at 2.45 p. m.

Re-direct-examination.

By Mr. Bradford:

RDQ84. Referring again to the Blue List and to the list of the Warner and S. & H. items which have been copied therefrom into the record, and to XQ70, I ask you to state whether or not there are any items listed in the right hand column opposite these Warner and Searle & Hereth items? Or whether the right hand column opposite said items is blank?

A. The right hand column is blank.

RDQ85. What is the significance of these blank lines in the right hand column opposite the Warner and S. & H. items, if you know?

A. It signifies that it is not necessary to have any similar preparation or replacer as we call it, because they manufacture these items themselves. Mr. Hagaman informed me that on the older lists that I knew there used to be preparations opposite the W. & Co. items.

By Mr. Rawle: The answer is objected to as hearsay and as irrelevant and as not proper for rebuttal.

E. R. Peabody.

By Mr. Rawle: Mr. Rawle states that he objects to the depositions of all the witnesses taken at this session, yesterday and today, upon the ground that they are not and none of them are proper for rebuttal and that they merely go into matters which are part of the plaintiff's *prima facie* case and were very fully gone into on the plaintiff's *prima facie* case.

For these reasons he now places on the record a notice given to counsel for plaintiff on June 25th, 1916, in the following words:

"I wish to give you notice that I shall object to any testimony offered in rebuttal which should have been produced on your *prima facie* case and particularly to the testimony of any witnesses as to alleged improper suggestions to druggists and others by defendant's salesmen; whether such testimony relates to transactions already referred to in your *prima facie* case or to alleged interviews between any of your witnesses and any of defendant's salesmen not referred to in your *prima facie* case."

I further give notice here to plaintiff's counsel that at the proper time I shall move the court to strike all of such depositions from the record, with costs.

By Mr. Bradford: I regret that I can not agree with learned counsel for defendant respecting what is proper rebuttal evidence in this case. I submit to the court that the objection by counsel is without ground in law or reason and further that the evidence offered for plaintiff as rebuttal yesterday and today would have been entirely improper and out of place in plaintiff's *prima facie* case. Further that the fact that the evidence thus offered in rebuttal and directly tends to rebut the evidence of the defense, also tends incidentally to confirm or sustain plaintiff's original case, does

not render it less evidence strictly in rebuttal. This is placed of record not for the sake of argument but to frankly acquaint counsel for defense with the grounds for my difference with his opinion and to show good faith in the further taking of the rebuttal for plaintiff. Immediately on receipt of notice from counsel for defendant of his objection, which notice he has quoted in the record, he was advised by a special delivery letter mailed within an hour after the receipt of said notice, that his notice was received and would be made a part of the record immediately following the notice given him of these depositions.

The examination of other witnesses named in the notice has been rendered impossible by circumstances over which plaintiff has no control and they will be called later as may be agreed upon.

Adjourned to meet at Fairfax Hotel, Norfolk, Virginia, at 10 o'clock to-morrow, Friday, June 30th, 1916.

Norfolk, Virginia,
June 30th, 1916.
Fairfax Hotel.

Met pursuant to adjournment.

Parties present as before.

HARRIET M. ALLEN, a witness of lawful age, called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to her by counsel:

By MR. BRADFORD: (at 10.50 a. m.)

Q1. Please state your name, residence and occupation?

A. Harriet M. Allen; 1005 Church Street, Norfolk, Va.; pharmacist, in retail drug trade.

Q2. Are you a registered pharmacist?

A. I am. I have been a registered pharmacist for twenty-five years. They amended the by-laws to admit me.

Q3. Are you the Mrs. Allen, the wife of Edgar B. Allen, who was a witness for plaintiff in this case and who has been referred to in the depositions of witnesses Moon and Hagaman called for defendant?

A. I am.

Q4. Are you acquainted with Mr. Victor M. Moon?

By Mr. Rawle: Mr. Rawle states that Edgar B. Allen was examined on behalf of plaintiff in the *prima facie* (Rec. p. 531) and that this was the proper time for the examination of the present witness if desired. The examination of Allen was held in the drug store of the witness. He therefore objects to the examination of this witness as not being proper for rebuttal and gives notice of a motion to strike the deposition from the record.

By Mr. Bradford: It is sufficient in reply to observe that the witness could not have been called to rebut the testimony of defendant's witnesses Moon and Hagaman prior to the depositions given by them, in defendant's behalf.

By Mr. Rawle: Mr. Rawle unwilling adds that the testimony of Allen was admissible as part of plaintiff's *prima facie* case, and that he testified to what took place between him and defendant's salesmen Moon and Hagaman. Moon and Hagaman were then called by defendant to state what took place at the interview and no further evidence is admissible, in rebuttal. Both sides have been heard.

A. Yes, sir.

Counsel for plaintiff stipulates that the objection may stand as to all questions asked this witness and all answers.

Q5. Are you acquainted with Mr. Sylvester J. Hagaman?

A. Not to say acquainted. I have never met the gentleman but once. I would not recognize him now if he were to come into the store.

Q6. Do you remember of any interview ever held with Mr. Hagaman in your store?

A. Mr. Moon and Mr. Hagaman came together and I gave an order.

Q7. Do you remember the date of this visit by Mr. Hagaman and Mr. Moon together, or approximately the date?

A. Only by referring to the invoice of the order given that day, which is, I think, May 1915, last year.

Q8. During that interview which of these gentlemen did the talking in seeking your order for goods?

A. Well, I recognized Mr. Moon as the salesman and laughed at him and asked him if he was being checked up, and he said "No", that Mr. Hagaman was with him to get acquainted with the trade in this territory.

Q9. Which of the two solicited your order?

A. Well, in fact, both, Mr. Hagaman took the order, but Mr. Moon wrote it down and also had his order book of previous orders, but he also referred to his note book of previous orders and prompted Mr. Hagaman.

Q10. In Mr. Hagaman's deposition as a witness for defendant in this case, in answer to XQ56, page 456, he stated that he called on you May 12, 1915, and in answer to XQ58, he stated that he did all the talking and in answer to XQ60 that Mr. Moon did not take any part in this conversation. Is this according to your recollection of the interview?

A. No, it is not, because Mr. Moon had as much to do with the taking of the order as Mr. Hagaman did, in the conversation that took place. When any question came up of any product that I wanted, Mr. Moon

being the regular salesman, I referred to Mr. Moon, asked him questions and he answered all the questions I asked.

Q11. Mr. Moon testifying as a witness for defendant in this case in answer to Q29, page 416, which asked him "What do you know about Edgar B. Allen", stated that he first ran across him approximately fourteen years ago, he was clerking for Mrs. Sterling at that time, a widow who owned a drug store on Church St., in Norfolk. Mr. Moon was testifying on December 9, 1915. What have you to say in reference to this statement by Mr. Moon?

A. Mrs. Sterling was not a widow until 1907. Dr. Sterling died in January 1907. That would only be nine years ago, or eight years prior to the time when Mr. Moon was testifying.

By Mr. Rawle: The question and answer are objected to as irrelevant and immaterial.

Q12. Mr. Moon further testified in the same answer, "I quit calling on him for several years under the old management on account of reasons, I did not care to call on him on his account, under the present management I have sold him quite a few orders more recently." What have you to say to this testimony?

By Mr. Rawle: Objected to as irrelevant and immaterial.

A. I have been absolute owner of Sterling Pharmacy for sixteen years. There has been no change in the management whatever in that time. What Mr. Moon's reasons might have been for not calling, I do not know. He never called on Mr. Allen, because Mr. Allen never did any buying. He called on me one time several years ago, but I can not remember the date, but he was partially under the influence of liquor and I gave him a very cold turn down. He was only then as a specialty man, not selling Warner's regular line, and since then the first order I have any record of was

in 1912, December, I think. And I have bought a little of Warner's goods each year since 1912, through Mr. Moon. When he came in 1912 it was just making a specialty of the Bucklin line and that was what I bought of him, but I only had one bill in that year, and I think it was in December.

Q13. This deal in December 1912 is then the first deal of which you have any record of purchase from Mr. Moon?

A. It is.

Q14. Does this conform to your memory as to about when you began dealing with Mr. Moon?

By Mr. Rawle: Same objection.

A. I won't say it was the first order that I have ever given Mr. Moon, but it was the first that was ever shipped direct from Wm. R. Warner. If there were any previous to it they were through the jobber.

Q15. How long ago would you say from memory it is since the first call was made by Mr. Moon at your store?

By Mr. Rawle: Same objection.

A. I could not answer that question because he was not personally known to me more than any other drummer that just happened to drop in. I knew for a long time before I ever purchased from Wm. R. Warner & Co., that he represented them, but I never purchased from him.

Q16. Was Mr. Allen present at the interview between you and Mr. Moon and Mr. Hagaman in May 1915?

By Mr. Rawle: Same objection.

A. He was.

Q17. Do you remember any interviews with Mr. Moon at which a preparation known as Quin-Coco was offered to you by him, and if so, please state what you recall respecting such interview?

A. Yes, I remember this conversation, but it would

be impossible for me to give dates as to when the conversation took place. Mr. Moon asked me if we used a chocolate syrup and I told him we only used Lilly's. He asked me why not try Warner's, that they made a preparation called Quin-Coco and that there was none better on the market. I told him my physicians specified Lilly and he then told me that his preparation was equal to Lilly's or any other on the market and that the chemist that formerly made Coco-Quinine for Lilly was now making Quin-Coco for Wm. R. Warner & Co. There was considerable conversation over the matter and I said "Now, look here, Mr. Moon, I handle Warner's Elixir Salicylic Acid Comp., and the physicians specify for it." I said, "Now, do you think I ought to dispense Mulford's on a prescription when they call for Warner's? I have both in the house." He said, "Oh, no, no, no." That is just the way he answered me. And I said then that stands good for Lilly's Coco-Quinine, that is the way I answered him. He also asked me if I did not have a counter demand for the chocolate quinine and I told him I did not.

Q18. During this conversation was the name Coco-Quinine freely used by Mr. Moon?

A. Yes, sir; in referring to Lilly's, yes.

Q19. Did he say anything in reference to how you could dispense Quin-Coco?

By Mr. Rawle: Objected to as leading and because the only proper question is as to what was said.

A. No, not to me, because I told him positively that I never substituted. He and Mr. Allen had considerable talk about it, but I dropped the matter and went on to the other line.

Q20. How many interviews did you have with Mr. Moon at which the subject of Quin-Coco and Coco-Quinine was discussed, as near as you can recall?

A. With every order except the last two, the last two visits he has never mentioned the subject.

Q21. What did he say in reference to the two preparations, Coco-Quinine and Quin-Coco, when telling you about the chemist who made the preparation first for Lilly and then for Warner?

A. That the two preparations were practically identical, and Warner's had the benefit of a lower price.

Q22. In Mr. Moon's deposition in answer to XQ51, page 422, he stated that he did not say either to Mr. Allen or in his presence anything from which he could infer that he intended to have him understand that Quin-Coco could be used in the place of Coco-Quinine. What have you to say as to this statement of Mr. Moon?

A. Well, I think I have answered that previously by saying that he told me that the two preparations were identical and trying to prove it to me by saying the same chemist who had formerly made Coco-Quinine now made Quin-Coco for Warner.

Direct-examination closed at 11.35.

Cross-examination.

By Mr. Rawle (at 11.35, without waiver of objections):

XQ23. Has Mr. Allen ever bought any goods for your store since he worked for you?

A. There is one specialty line that Mr. Allen always buys, the general line I buy all.

XQ24. What specialty line?

A. A line of rubber goods that a woman has no business handling.

XQ25. Then I take it that if a drug salesman calls at your store to offer his goods, if you are out Mr. Allen does not talk to him. Is that correct?

A. Mr. Allen may talk to him, but he does not buy from him. He may make a date with the salesman to return when he knows I will be there. Understand, when I say that Mr. Allen does no buying, that I am referring to out of town salesmen, the local jobbers are

authorized to receive any order from Mr. Allen the same as from me. Out of town bills I buy exclusively.

XQ26. You said that in 1912, December, you kept in stock Wm. R. Warner and Company Elixir of Salicylic Acid Comp. Am I correct?

By Mr. Bradford: Objected to as not a correct statement of the witness' testimony.

A. Yes, sir; the same as any other proprietary preparation the physicians specify for, but that order was my first order direct from Wm. R. Warner. It had always been purchased through a jobber.

XQ27. You also testified that when Mr. Moon called on you in December 1912, "It was just as making a specialty of the Bucklin line and that was what I bought of him." Are you perfectly sure that you bought nothing else from him at that time except Bucklin products?

A. When Mr. Moon came in he informed me that he had a special deal in the Bucklin line with special terms, and I bought. After I had purchased the Bucklin line he asked me if there was not some of Wm. R. Warner's preparations that I was in need of, and I bought the Elixir Salicylic Comp. as the only thing I needed outside of the Bucklin line. The reason I am positive, I referred to the invoice last night, to find when my first purchase direct was made.

XQ28. You now say that at the December 1912 call you bought Elixir Salicylic Comp., W. R. W. & Co. Before that you say that you bought only the Bucklin line at that interview, which is correct?

A. I think I said formerly the Bucklin line and the Salicylic Comp. both. If I did not then I should have done so, because that was correct.

XQ29. When Dr. Sterling was living what part did he take in the drug store business, which you say you have owned for sixteen years?

By Mr. Bradford: Objected to as immaterial and irrelevant and not cross-examination.

A. You not being familiar with the circumstances I don't blame you for asking me that question, but I will explain. When I married Dr. Sterling I was a young girl of 20 and he was 65. As a natural consequence I had to be the bread winner in the later years of his life. He sat in a chimney corner and smoked his pipe.

XQ30. And you ran the business altogether?

A. I ran the business before I owned it.

By Mr. Bradford: All of these questions are objected to as irrelevant, immaterial and not cross-examination.

XQ31. How many years have you owned the business?

A. Sixteen years this month. Dr. Sterling turned it over to me on a bill of sale sixteen years ago this month in exchange for a piece of property, that was in my own right.

Cross-examination closed at 11.55

Re-direct-examination.

By Mr. Bradford:

RDQ32. Was Mr. Allen usually present at your interviews with Mr. Moon?

A. I think he was present at every interview excepting the one I have spoken of in December 1912. At that time he was at our branch store, in Ocean View.

RDQ33. And he was in a position to hear the conversation that took place?

A. I seldom ever make a purchase without consulting Mr. Allen. He sells seventy-five per cent. of the goods and I want his opinion as to whether they are salable.

RDQ34. I ask you to read Qs. 24 to 27, pages 415-416, in Mr. Moon's deposition, and his answers, and state whether or not Mr. Moon's methods and practices in soliciting orders for goods as observed by you are

consistent with the ethical standard Mr. Moon endorses in his answers to these questions?

By Mr. Rawle: The same general objections first placed of record are here repeated. Further objected to because the form of the question is inadmissible, the only proper question to ask the witness is as to what was said by Mr. Moon in her presence.

A. No, they are not, because he did try to sell Quin-Coco to take the place of Coco-Quinine. But this is the only preparation Mr. Moon ever offered to me to take the place of any other on the market.

By Mr. Rawle: The answer is objected to because the witness does not state facts or what was said.

Harriet M. Allen.

Edgar B. Allen, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford: (at 1.05 p. m.)

Q1. Are you the same Edgar B. Allen who previously testified as a witness on behalf of plaintiff herein?

A. I am.

Q2. I ask you to read Qs. 24 to 27, pages 415-416, in Mr. Moon's deposition, and his answers, and state whether or not Mr. Moon's methods and practices in soliciting orders for goods as observed by you are consistent with the ethical standard Mr. Moon endorses in his answers to these questions?

By Mr. Rawle: The question is objected to as not proper for rebuttal. The witness has already been examined on the plaintiff's *prima facie* case and the witness Moon was examined as to his ver-

sion of the conversation that had taken place between the present witness and Moon. Both have been heard as to their version of the interview.

The question is also objected to as inadmissible in form and because it does not call for facts but for the opinion of the witness. Notice of a motion to strike out is given.

A. Mr. Moon's practices are entirely opposite from his testimony.

Q3. I also call your attention to Mr. Moon's answer to Q29 on page 416, and ask what you have to say in reference thereto? Mr. Moon was testifying on Dec. 9, 1915.

By Mr. Rawle: Same objections and notice.

A. Mr. Moon is entirely wrong in stating that he met me fourteen years ago. My first meeting with Mr. Moon was in, as far as I recollect, August 1913. He states here that he ran across me clerking for Mrs. Sterling, a widow at that time. Dr. D. G. Sterling, the husband of the then Mrs. Sterling, did not die until 1907. I married Mrs. Sterling in June 1910, and have no recollection of Mr. Moon calling on us until after I returned from the Ocean View store in 1913. The first business the Sterling Pharmacy did with Mr. Moon was in 1912.

Q4. A certain interview or call has been referred to in your deposition and in the deposition of Mr. Moon and in the deposition of Mr. Hagaman, at which Mr. Hagaman accompanied Mr. Moon, the visit having been in May 1915. Do you recall that interview, and, if so, please state which of the two gentlemen did the talking in soliciting the order on that occasion?

By Mr. Rawle: Same objections and as irrelevant and immaterial.

A. I recall that interview. Mr. Moon came into the store and introduced Mr. Hagaman as their assistant sales manager. Mr. Moon then went on asking us

if there was anything we needed. And knowing the line of goods that we had been in the habit of purchasing from him he called over the list of preparations and made suggestions as to what we might need. Mr. Hagaman also went over the list and catalogue and as items were ordered Mr. Moon wrote them down. During the buying my wife went into the storage room to look up stock, Mr. Hagaman offered Quin-Coco as a chocolate syrup of quinine which could be used for all purposes as Coco-Quinine.

Q5. Mr. Hagaman when testifying as a witness for defendant stated in reference to this interview that Mr. Moon had nothing to say. What have you to say as to this?

By Mr. Rawle: Same objections.

A. It would have been unreasonable for Mr. Moon to have nothing to say, as he knew our needs in his line and knew what goods we had been in the habit of purchasing from him. Mr. Hagaman knowing nothing of the character or amount of goods that we purchased from Wm. R. Warner & Co., was in no position to offer suggestions as to what we were to buy. The selling was done by Mr. Moon.

Q6. Mr. Moon, in his testimony, has also denied that he ever told you or suggested to you that Quin-Coco was the same thing as Coco-Quinine, or could be used for Coco-Quinine. Have you since your last testimony recalled any other incidents bearing upon this subject?

By Mr. Rawle: Same objections, the witness being asked to state on rebuttal something which he forgot to state when testifying on his *prima facie* case.

A. On one occasion on offering Quin-Coco he stated that the chemist who manufactured Quin-Coco was one who had been in the employ of Eli Lilly & Co., and that he had perfected Quin-Coco to such an extent that it

was a smoother and more easily dispensed preparation than Coco-Quinine.

Direct-examination closed at 1.20.

No cross-examination.

Deposition closed.

E. B. ALLEN.

Newport News, Va.,
June 30th, 1916.

Met pursuant to adjournment.

Parties present as before.

H. W. DUNN, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. H. W. Dunn; age, 50; Newport News, Va.; retail druggist; manager of the Chestnut St. Pharmacy.

Q2. Are you acquainted with Mr. Victor M. Moon, a traveling salesman for Wm. R. Warner & Co.?

A. Yes, sir.

Q3. I call your attention to XQs. 54 and 55 on page 422 of Defendant's Record, being a part of Mr. Moon's testimony as a witness for defendant in this case, and ask you to read the answers and state whether or not you recall the incident there related by Mr. Moon?

A. No, sir. I can't recall that at all and I have searched every chamber in my brain, to see if I could. I have no recollection whatever of it.

Q54. Have you talked with Mr. Moon about this incident since he testified?

A. Yes, sir.

Q5. And did he endeavor to refresh your memory and recall the incident to your mind?

A. Mr. Moon called since Mr. Wetzel mentioned this subject to me. I spoke to him about it and we had a conversation and discussion of his statement. I told him that I could not recall any such incident, and I have been unable to since.

By Mr. Rawle: Objected to as not proper for rebuttal and as irrelevant and immaterial. This objection stands to the entire deposition by consent of counsel.

No cross-examination.

H. W. Dunn.

IN THE
DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Pennsylvania.

IN EQUITY.

No. 1355.

THE ELI LILLY AND COMPANY,
Plaintiff,

vs.

WM. R. WARNER & COMPANY,
Defendant.

Washington, D. C., July 3, 1916.

Francis Rawle, Esq.,
West End Trust Bldg.,
Philadelphia, Pa.

Dear Sir:

As a partial list of witnesses to be examined on our trip South, I submit the following:

F. M. King and L. B. Hardy, of Atlanta, Ga.; J. E. Greene, of Spartanburg, S. C.; Mr. R. Willis, of Den-

mark, S. C.; J. E. Justice and J. T. Fletcher, of Clarksville, Tenn.; C. T. Tanner and W. C. Batts, of Springfield, Tenn.; Dr. D. J. Kuhn and G. A. Blodau, of Nashville, Tenn.; Edward V. Sheely, F. W. Ward, Edward Collins and G. A. Lavison, all of Memphis, Tenn.

There are several other witnesses who have been named to me as "parties"; for example, Mr. Vinson advises me that a "party in Dawson" (Georgia) will testify for us, but does not give me his name. I am trying to get these names by wire, in order that I may furnish them to you at the earliest possible moment.

Neither have I been advised of the names of the witnesses who will appear for us at New Orleans, except that Mr. Heno, the prescription clerk in his store, and a doctor at Napoleonville, are among the witnesses.

Mr. J. R. Stuckey, of Samson, Ala.; Laurence Daniels and Charles Burkett, of Mobile, Ala.

I may recall the witnesses who before appeared for plaintiff, especially witnesses John B. Reid and John M. Mosely.

This covers the list as complete as I can give it today.

It is now my purpose to leave here Thursday in time to examine the Atlanta witnesses Friday and then proceed to either Montgomery or Nashville and examine the witnesses that can be brought in to either of these cities, then proceed to the other, and then to Memphis.

By the time we meet in Atlanta, I shall hope to be able to hand you the names of the additional witnesses, as well as the names of our witnesses in Texas, St. Louis and Indianapolis. There will also be some witnesses from Michigan. These depositions we will probably take in Detroit.

As I understand the arrangements, the witnesses will all come to one or the other of the large cities named, so that we will not be under the necessity of going to small towns, as on our other trip. I realize

that, at this season of the year, it is not going to be a very pleasant trip, and we shall do everything we can to make the trip as convenient and comfortable as possible.

Unless I am definitely advised that the witnesses will be ready, the start on the trip may be delayed for a day or two, because I wish to clean up everything as we go along and not be obliged to go back or to arrange for witnesses to come long distances. It has been a very difficult matter to make the arrangements, as I think you fully appreciate, but I am doing everything possible to secure definite information on which we can act.

Yours very truly,

EWB/McB E. W. Bradford.

Atlanta, Georgia,
Piedmont Hotel,
August 7th, 1916—10 a. m.

Met pursuant to notice and agreement of counsel.

Present:

Mr. E. W. Bradford, on behalf of plaintiff; and
Mr. Francis Rawle, on behalf of defendant.

Michael R. Willis, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. Michael R. Willis; age, 28; Denmark, S. C.; retail druggist, and at the present time I am also City Clerk and Treasurer of the City of Denmark.

Q2. How long have you been in the retail drug business at Denmark?

A. Since 1910.

Q3. Do you know Mr. L. B. Hardy, a former representative of Wm. R. Warner & Co.?

A. Yes, sir.

Q4. Did you ever buy goods of him while he was representing Wm. R. Warner & Co.?

A. Yes, sir.

Q5. Did you ever buy of him a preparation called Quin-Coco?

A. Yes, sir.

Q6. What representations were made to you by Mr. Hardy in soliciting your order for this preparation as an inducement for you to purchase it?

By Mr. Rawle: Counsel for defendant objects to the question as not proper for rebuttal and as inadmissible, the matter inquired of being part of the plaintiff's *prima facie* case, and the subject having been there examined into at great length. He repeats the objections and notices hitherto made since the beginning of the rebuttal testimony to this line of evidence and gives notice that a motion to strike all such testimony from the record with costs.

A. He said it was the same thing as Coco-Quinine, the only difference being the price; that is was a good substitute; that nobody could tell the difference. That is practically the argument he put forth.

Q7. Did he demonstrate in any way that the two preparations were sufficiently alike that no one could tell the difference?

By Mr. Rawle: Same objections and notice and further as leading.

A. Yes, he showed me his sample; had me pour some Coco-Quinine in a clear bottle and asked me if I

could tell the difference, by looks or taste. I don't think I tasted it but I couldn't tell any difference.

By Mr. Rawle: The answer is further objected to as irrelevant.

Q8. Have you purchased goods of other representatives of Wm. R. Warner & Co.? If so, how many?

By Mr. Rawle: Same objections.

A. Yes, sir; I bought from Atkinson and I don't remember the last man who came through there; he only made one trip and I have forgotten his name.

Q9. Did Mr. Hardy represent to you any other of the Warner items to be good substitutes for items of other houses?

By Mr. Rawle: Objected to as not proper for rebuttal, as irrelevant and leading.

A. Yes, sir.

Q10. Can you recall some of them, and if so, please name them?

By Mr. Rawle: Objected to as not proper for rebuttal and as irrelevant.

A. Aloin, belle donna, strychnine and ipecac pills, as a substitute for lapactics. Mr. Hardy didn't show me any other, at least I didn't buy them if he did.

Q11. What was the policy of the other Warner representatives who have called on you in soliciting orders for the same items?

By Mr. Rawle: Objected to as not proper for rebuttal; because the only admissible evidence is as to what was said and a question as to "policy" is inadmissible.

A. The same as Mr. Hardy's.

Q12. What is Mr. Hardy's reputation as a man entitled to be believed, if you know?

By Mr. Rawle: Objected to as not proper for rebuttal and as inadmissible.

A. He impressed me as being a reputable man.

Direct-examination closed.

Cross-examination. (at 10.45)

By Mr. Rawle (without waiver of objections):

XQ13. Mr. Willis, you will pardon me if I ask you whether you consider yourself an honest druggist?

A. So far as I can I try to be fair and square.

XQ14. Did Hardy make you any dishonest proposition as to Quin-Coco or Aloin?

By Mr. Bradford: Objected to as calling for matter of opinion and not competent or relevant.

A. It did not prove so if he did.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ14. What do you mean by "It did not prove so"?

By Mr. Rawle: Same objections.

A. I mean that I could not tell the difference in the preparations.

By Mr. Rawle: A motion is made to strike this deposition from the record.

Deposition closed.

Michael R. Willis.

Francis M. King, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford: (at 11.10 a. m.)

Q1. Please state your name, age, residence and occupation?

A. Francis M. King; age 32; 43 West Peach Tree St., Atlanta, Ga.; salesman for Eli Lilly & Co.

Q2. How long have you been in the drug business and where?

A. Since 1905, in Macon, Eastman, Columbus, Rome, Daltonville and Atlanta, all in Georgia.

Q3. Are you a graduate pharmacist and if so, when did you graduate?

A. I am. From Mercer University, in 1907.

Q4. Won't you please give the names of the stores in which you have worked, and your position in each store from the beginning down to the time you began working for Eli Lilly & Co.?

A. Clerk in Person's Pharmacy, Macon, Ga., from 1905 to 1907; I then went to Pellew's Pharmacy, Macon, Ga., as clerk from 1907 to 1909; I was then made manager of the Vineville drug store of Macon, Ga., owned by Pellew's, from 1909 to 1910. I filled in at Eastman Drug Company for a month as manager. I was then manager of the Fox Drug Company, of Columbus, for four months. I then opened Wright & Graham store at Rome, Ga., and was there for two years as manager. I then bought a store in Dalton, Georgia, and operated it myself for two years. I was then sick for a year and did not work. Last August I took charge of Palmer's drug store in Atlanta, until January 29th, 1916, when I went with Eli Lilly & Co., as traveling salesman, covering North Georgia territory, except Atlanta, including a section of North Alabama, which position I now hold.

Q5. Do you know Stonewall J. Nottingham, who was a witness for defendant in this case, and if so, how long have you known him?

A. I do, and have known him for about seven years.

Q6. What have been your relations with Mr. Nottingham?

A. I have bought goods from him and have known him in a business way only, covering this period of seven years.

Q7. Stonewall J. Nottingham, as a witness on behalf of defendant herein, testified as follows:

"Q15. If a retail druggist on a prescription or a call over the counter, specifying a given preparation made by a certain house, should dispense a similar preparation of a different house, state whether or not you consider that as honest on the part of the druggist?

A. I think it is dishonest; I know it is dishonest.

Q16. Will you state whether or not you thereby express the ethical standard of honesty in a drug business?

A. It is dishonest, where a specification is given, not to supply what is specified.

Q17. Is that the ethical standard of the retail drug business?

A. That is the way I understand it.

Q18. If a salesman should suggest that sort of thing to a retail druggist in offering him goods, will you state whether or not you consider that would be honest on the part of the salesman?

A. It would be dishonest to suggest replacing one article for another; where one is specified it should always be given.

Q19. Will you state whether or not that has been your standard?

A. That is my standard."

I ask your attention to these questions and answers of Nottingham and whether or not the standard of ethics there defined by him is the same as practiced by him in his soliciting orders from you and if not in what particulars his practice was inconsistent with this statement?

By Mr. Rawle: Objected to as not proper for rebuttal, as leading, as calling for generalizations and inferences, and an opinion, instead of asking

for facts, and as inadmissible and incompetent. Notice of a motion to strike out is given.

A. It is not in accordance with his policy in soliciting business from me. On one occasion I remember his suggesting that I buy a pill from him as a substitute for Park Davis & Company's Alophen and an elixir to replace Battle & Co.'s Papine, both of which items I bought at Mr. Nottingham's suggestion.

Q8. Please state the conversation that took place between you and Nottingham at the time, and any incidents leading up to the deal?

By Mr. Rawle: Objected to as not proper for rebuttal and as inadmissible.

A. When Mr. Nottingham suggested my buying a pill to replace Alophen pills, I laughed because I did not think he had one as I was not very familiar with soft mass pills at that time, and was under the impression that Park, Davis & Co. were the only people who made one. He offered to take some Alophen pills and some of his replacer, put them in separate containers, mix them behind my back, and bet a cigar I could not tell the difference. I lost the cigar, I could not tell the difference. The elixir I bought on his say so.

Q9. Was any one present at this interview with Nottingham?

A. My clerk, F. C. Black.

Q10. Where did this incident take place?

A. In the front part of the store of the King Drug Company, Dalton, Georgia.

Q11. Did Mr. Nottingham ever solicit your order for a preparation called Quin-Coco? If so, what representations did he make respecting this item?

By Mr. Rawle: Same objections.

A. He offered Quin-Coco as a substitute for Coco-Quinine on several occasions, once in particular insisting that I try it, but I never did.

Q12. What did he say to you with respect to the two preparations, Coco-Quinine and Quin-Coco?

By Mr. Rawle: Same objections.

A. That they were the same thing; that Quin-Coco could be used for Coco-Quinine; and that I would make more money.

Q13. Mr. Nottingham as a witness for defendant testified in answer to Q31, page 399, of defendant's record, that he has never suggested to any one replacing Coco-Quinine with Quin-Coco. Your last answer would seem to indicate that Mr. Nottingham erred in this statement. What have you to say as to this?

By Mr. Rawle: Objected to as not proper for rebuttal; as leading, and as improper and inadmissible.

A. He did offer Quin-Coco to me as a substitute for Coco-Quinine.

Q14. In answer to Q40, page 401, he stated that the majority of chocolate quinine preparations in his territory is sold over the counter "on calls for syrup of quinine, chocolate quinine, sweet quinine". From your experience as a retail druggist in the several localities where you have served in drug stores, what is your view as to the correctness of this statement?

By Mr. Rawle: Objected to as not proper for rebuttal.

A. I don't recall ever having a call for "chocolate quinine" as such, but always as Coco-Quinine.

Q15. How about "Syrup of Quinine"?

Same objection.

A. If I were working in a retail drug store and had a call for "Syrup of Quinine" I would give them tasteless syrup of quinine which is not a similar preparation to Coco-Quinine at all.

Q16. How about "sweet quinine"?

Same objection.

A. That holds good of sweet quinine too.

Q17. Will you please explain the difference between Coco-Quinine and the preparation you have referred to as "tasteless syrup of quinine"?

Same objection.

A. Tasteless syrup of quinine is a suspension of the cinchona alkaloid in simple syrup like Fibrilene, while Coco-Quinine—I don't know what Coco-Quinine is—it is a special preparation of a syrup of quinine in which is incorporated chocolate.

Q18. While in the retail drug business did you ever have a call for "chocolate quinine" either over the counter or on prescription?

By Mr. Rawle: Same objection.

A. To the best of my recollection I have not.

Q19. Does this cover your entire period of service from 1905 down to February 1916?

Same objection.

A. It does.

Q20. In answer to Q58, page 404, defendant's record, witness Nottingham defined his method of practice in taking up with the retail druggist a proposition to sell him Quin-Coco as follows:

> "A. I ask him how is their stock of Quin-Coco, and if they ever handled it before, or chocolate quinine—I would say, 'How is the chocolate quinine'? They have a regular demand for it right over the counter, for chocolate quinine. I gave the labels there of several of them. That is the way they get rid of it. A good many doctors prescribe it, preferring it to any other make."

What have you to say as to this?

By Mr. Rawle: Objected to as not proper for rebuttal.

A. I recall once on Nottingham's asking for busi-

ness of his picking up my stock bottle of Coco-Quinine and asking "How about sending you a gallon of this at a price." I turned him down so flat that he didn't worry me about Quin-Coco any more.

By Mr. Rawle: The answer is objected to as not stating what was said, being merely an inference.

Q21. At any time did Nottingham ever introduce the subject with you by asking you "How is your stock of Quin-Coco"?

Same objection.

A. No, sir.

Q22. Did he ever introduce the subject with the question, "How is the chocolate quinine"?

By Mr. Rawle: Objected to as not proper for rebuttal, as leading and as inadmissible.

A. He did not.

Q23. Did Nottingham ever offer you Quin-Coco put up in two ounce bottles and four ounce bottles to be sold under the original label?

By Mr. Rawle: Objected to as not proper for rebuttal and as leading and irrelevant.

A. He did not.

Q24. Was the item Coco-Quinine handled and sold on prescription and on call over the counter in the several retail stores where you worked during the period from 1905 to 1916?

A. It was.

Q25. Was it in fairly good demand at these several stores?

By Mr. Rawle: Objected to as not proper for rebuttal and as irrelevant.

A. It was a ready seller, both on call and on prescriptions.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 12 m., without waiver of objections):

XQ26. I understand that Coco-Quinine is bought by druggists in bulk and that when sold over the counter it is transferred to the druggist's own bottle with the druggist's own label. Is that correct?

A. Usually, although I have sold original pints.

XQ27. But not frequently?

A. No big demand for original pints, but enough to warrant all the stores carrying them in stock as well in bulk packages.

XQ28. Have you ever stocked Quin-Coco?

A. No, sir.

XQ29. Do you know whose product it is?

A. My recollection is that it has a Searle & Hereth label on it.

XQ30. Do you know whether it is known in the trade as their product?

A. Quin-Coco is known to the trade generally as Warner's substitute for Coco-Quinine.

XQ31. Are you speaking now as a Lilly salesman, which you are, or from your experience as a retail druggist?

A. I am speaking from a knowledge acquired both in the retail drug business and as a salesman.

XQ32. When you offer for sale to a retail druggist a Lilly product which is similar in therapeutic effect to some product of another drug house, do you consider you are offering it as a substitute for that other product?

By Mr. Bradford: Objected to as not cross-examination, immaterial, incompetent and irrelevant.

A. If another pharmaceutical house copyrighted specialty, yes. If a general line pharmaceutical, no.

XQ33. Name some Lilly products which are similar to products of other houses?

By Mr. Bradford: Objected to as not cross-examination, as a gross violation of the right of cross-examination outside of the court room, an endeavor to make witness his own, and as incompetent, immaterial and irrelevant.

A. Tablets of calomel and soda, fluid extract of cascara, elixir of iron, quinine and strychnine, all of which I am under the impression are manufactured and sold by all pharmaceutical houses.

XQ34. Please name other preparations?

By Mr. Bradford: Objection repeated.

A. Fluid extract of ergot, fluid extract of prickly ash, Blaud's Pills, compound cathartic pills, tablets of calomel, of ipecac, and soda, elixir of aletris compound, elixir of lactated pepsin, elixir of buchu, juniper and potassium acitate.

XQ35. I understand that as to all these mentioned Lilly products a similar product is marketed by one or more or many other drug houses. Is that correct?

By Mr. Bradford: Objection repeated.

A. To the best of my knowledge, yes.

XQ36. How many more such Lilly products could you name as to which a similar product is marketed by one or more other houses in competition with Lilly's products?

By Mr. Bradford: Objection repeated.

A. It would be a question of memory to a large extent.

XQ37. Give your estimate of how many such products there are?

By Mr. Bradford: Objection repeated.

A. Never having counted competitive items in the Lilly catalogue, I am unable to give even a rough estimate.

XQ38. Have you any doubt that there are as many as a hundred such?

By Mr. Bradford: Objection repeated.

A. Absolutely none.

XQ39. Have you any doubt that there are as many as five hundred such?

By Mr. Bradford: Objection repeated.

A. I know that there are as many as a hundred but I have no idea how many more.

XQ40. I understand that any druggist carrying such a Lilly product as to which there is a similar product made by another house, could without fear of detection supply the Lilly product when a make of another house is called for on prescription or over the counter. Is this substantially correct?

By Mr. Bradford: Objection repeated, and further a protest is placed of record against this manifestly unfair procedure, in no sense cross-examination, and notice given that it will be called to the Court's attention, not only for the purpose of determining the competency of the question propounded but also for the purpose of taxing defendant with costs.

A. Of the items I have enumerated, yes, except in shapes and styles of pills and tablets.

XQ41. Then, whether or not the druggist thus uses the Lilly product is a matter for the honesty of the druggist, is it not?

By Mr. Bradford: Objection and protest repeated.

A. Unless some particular house's product is specified, inasmuch as these products, or rather the formula for these products, in the majority of instances, is designated either by the pharmacopœia, National Formulary, or some other official reference book, it is not a question, on these items, of honesty or substitution.

XQ42. But I think you have said that in respect of the Lilly products you have been referring to, a retail druggist could dishonestly use one of the Lilly

products when a similar product of another house was called for on prescription or over the counter. Is that correct?

By Mr. Bradford: Objection and protest repeated.

A. If a general line product is called for over the counter or prescribed with some particular manufacturer's make called for, it would be dishonest to give him some other manufacturer's make, without the customer's knowledge.

XQ43. And that would be a question for the honesty of the druggist, wouldn't it?

By Mr. Bradford: Objection and protest repeated.

A. I should think so.

XQ44. When you sell a retail druggist one of these Lilly products which he could, if he were dishonestly minded, pass off for a similar product of another house, do you consider that you were dishonest in selling the druggist that product?

By Mr. Bradford: Objection and protest repeated.

A. If I sell him a product under our formula and name on the merits of our product and our price, without any reference to anything else, I do not consider it dishonest.

XQ45. If a retail druggist should say to you that he had been stocking Park, Davis & Company's elixir of iron, quinine and strychnine, and should ask you if Lilly had any like or similar preparation, what would you say?

By Mr. Bradford: Objection and protest repeated.

A. That Eli Lilly & Co. manufactured both U. S. P. and other iron, quinine and strychnine formulas, and would endeavor to sell him our product.

XQ46. Do you really think you would be so elaborate as that? Wouldn't you probably just mention the Lilly product and offer it to him?

By Mr. Bradford: Objection and protest repeated.

A. Inasmuch as both Park, Davis and Lilly manufacture several formulas for this product, it would take some investigation as to the formula they desire to find out the price, so this elaborateness would seem somewhat necessary.

XQ48. Are all the Lilly products that you have mentioned made on formulas of either the U. S. P. or the N. F., and if not, which are not?

By Mr. Bradford: Objection and protest repeated.

A. To the best of my knowledge the majority of these formulas are manufactured by the processes or formulas given in some standard work on pharmacy.

XQ49. Can't a dishonest druggist pass off a preparation of a given house made under a U. S. P. or N. F. formula for a similar preparation of another house just as well as if neither preparation were made under the U. S. P. or N. F. formula, and if he did so would it not be just as dishonest in the druggist?

By Mr. Bradford: Objection and protest repeated, and further objection to the question is made as calling for opinion.

A. I am unable to answer that question.

XQ50. Why can't you?

By Mr. Bradford: Objection and protest repeated.

A. Because technique in the manufacture of various products of all houses will cause a variation in color, taste and appearance, that would sometimes make such a transaction impossible without detection.

Recess until 2.30.

Afterr recess.

XQ51. Can not a disshonest druggist dishonestly pass off a preparation off a given house made under a U. S. P. or N. F. formula, for a similar preparation of another house, just as wwell as if neither preparation were made under a U. S.. P. or N. F. formula, and if he did so, would it not, in your opinion, be just as dishonest in the druggist?? In answering the question assume that the respectivve preparations are substantially similar in color, tastte and appearance?

By Mr. Bradfordd: Objection and protest repeated.

A. If in the call for tlhe particular preparation the prospective customer hadd specified some particular manufacturer's make, the substitution of another manufacturer's make would, inn my opinion, be dishonest.

XQ52. And that couldd take place dishonestly just as easily with U. S. P. orr N. F. preparations as with preparations that are nott U. S. P. or N. F., could it not?

By Mr. Bradfordd: Objection and protest repeated.

A. In my opinion the disregard of the specification would be where the dishonesty would come in.

XQ53. You have refeerred to an offer from Nottingham of a Warner prooduct similar to Parke-Davis alophen and of an elixir similar to Battle's papene. Are either of those preparrations U. S. P or N. F.?

Same objection aind protest.

A. They are not so fair as I know. I have not seen the latest issues of the U. SS. P. and N. F.

XQ54. Does Lilly mairket preparations similar to alophen P. D and Papenne, Battle, and if so what is the name of the product?

By Mr. Bradfordd: Objected to as not cross-examination, incompeetent, immaterial and irrelevant.

A. Yes; Phenolththalien Compound and elixir of morphine hydrochloride. There are two of those Phenolththalien Compounds. I don't recall which is similar to Parke-Davis' preparations.

XQ54. If you were offering a retail druggist those Lilly products and you demonstrated to him that they were pharmaceutically similar to the respective Parke-Davis and Battle preparations, would you think that you were making him a dishonest proposal that he should in selling your Lilly products dishonestly pass them off for the Parke-Davis and Battle products respectively when they were specifically called for?

By Mr. Bradford: Objection repeated and a protest against this line of questioning is made on the ground that it is not only not cross-examination, but a most flagrant violation of the rules of evidence, and a grossly unfair advantage of the privilege of cross-examining the witness outside of the court room.

By Mr. Rawle: If I did not deem my questions and each of them perfectly proper in cross-examination I would not ask them.

By Mr. Bradford: The Court's attention is asked to the fact that there is not the slightest basis in the direct-examination for any question asked this witness on cross-examination. The examination is manifestly taking unfair advantage of the situation referred to to put upon the record matters which counsel believes may be of advantage to his side of the case, and which he had ample opportunity to show and to prove in his own time and by his own witnesses and which under no rule of evidence has he a shadow of right to attempt to prove by plaintiff's witnesses.

A. If I suggested that he substitute the Lilly product in question for the original in question, I would consider that I had made my prospective customer a dishonest proposition.

XQ55. What year was it that Nottingham offered you preparations similar to alophen and papene?

A. The year 1913, to the best of my recollection.

XQ56. I am sure I am right in assuming that you carried yourself honestly all those years as a retail druggist, and in assuming that as a Southern man you would be quick to resent any reflection on your honesty. Please state whether you said anything to Nottingham by way of resenting anything he said to you in offering you this product similar to alophen and papene, and if so, state the words which you used?

By Mr. Bradford: Objected to as incompetent, immaterial and irrelevant, not calling for any information having the slightest value in determining any question at issue in this case, and also as including unnecessary and frivolous insinuations.

A. I am sorry to say that I bought the two products at Mr. Nottingham's suggestion as a substitute for the two items in question and used them as such, not only on one occasion, but to my certain recollection twice. And I consider that I violated the ethics of my profession in allowing Mr. Nottingham to persuade me to do this.

XQ57. As you admit that you were a dishonest druggist on these occasions in selling those goods, may it not be possible that some of the temptation to buy them from Nottingham came from you yourself?

By Mr. Bradford: Objection repeated.

A. Not knowing that Mr. Nottingham was with a house that offered substitutes for any product the suggestion to use them as substitutes came from him, my not knowing that such items were manufactured at that time by anyone but the originators of these two products.

By Mr. Rawle: The answer is objected to for bias on the part of the witness who is employed by the plaintiff.

By Mr. Bradford: It is noted that if a like objection had been recorded to defendant's testimony and would properly lie against defendant's testimony, but little would remain to support defendant's contentions.

XQ58. When was it that Nottingham picked up your stock bottle of Coco-Quinine, as you have testified (Q20)?

A. During the solicitation of business at the same time the other items were purchased. It was in 1913.

XQ59. Was that the first time he ever solicited your trade in any drug store?

A. That was the first time that he had ever called on me after I was in a position to do the buying, Mr. Nottingham not having called on me in Rome, so far as I can remember.

XQ60. Has Nottingham since solicited your trade?

A. Mr. Nottingham called on me last Fall, while I was manager of Palmer's drug store, Atlanta, Ga., and solicited business from me.

XQ61. Did you buy anything?

A. I bought to the best of my recollection a small deal of Sloane's Liniment at this time.

XQ62. Prior to 1913, when Nottingham called on you, had you known that there was a Quin-Coco preparation on the market?

A. My first recollection of Quin-Coco was an endeavor on Mr. Nottingham's part to sell my employer Mr. L. E. Pellew, of Macon, Ga., some of this product. I can't just definitely give you the time on this. It was along during 1909 and '10, during my employ by Mr. Pellew.

XQ63. Between 1909 and '10 and 1913, do you think you were familiar with the fact that there was a product on the market called Quin-Coco?

A. I don't suppose I had a lapse of memory during that time

XQ64. Then if you were familiar with that fact, did you know that it was a Searle & Hereth product?

A. No, sir; I did not.

XQ65. When did you first know that?

A. I believe that the first knowledge I had of its being marketed under the Searle & Hereth label, was on Mr. Nottingham's visit to me in Dalton, Georgia, in 1913. I recall having seen in Mr. Nottingham's label portfolio a number of Searle & Hereth labels, and to the best of my recollection that was the first time I had ever seen a Quin-Coco, Searle & Hereth, label?

XQ66. Then at the time he picked up your stock bottle of Coco-Quinine did you know that there was a Quin-Coco product on the market under a Searle & Hereth label?

A. I can't say, not knowing whether this happened before or after I had looked at Mr. Nottingham's portfolio.

XQ67. When he picked up your stock bottle of Coco-Quinine and made the remark you have stated, did you understand him to offer to sell you specifically some Coco-Quinine, or a product similar to it?

A. I understood that he was offering me a substitute for Coco-Quinine.

XQ68. That is something that you could dishonestly pass off for Coco-Quinine if you wished to do so? Is that correct?

A. That is my idea of the meaning of the word "substitute".

XQ69. Are there not a great number of preparations in stock in any well stocked drug store of which there are similar products of two or more houses, and as to which the druggist, if dishonest, could pass off one for the other dishonestly?

By Mr. Bradford: Objected to as not cross-examination, incompetent, immaterial and irrelevant.

A. There are a number of similar preparations made by various pharmaceutical houses that possibly could be passed off one for the other.

XQ70. Would there be as many as one hundred of such in a big drug store?

By Mr. Bradford: Objection repeated.

A. I am unable to say.

XQ71. Is not your familiarity with drugs as a Lilly salesman sufficient to enable you to give an approximate answer to my question?

By Mr. Bradford: Same objection.

A. It is not.

XQ72. As a Lilly salesman do not a very large number of your items which you are offering to druggists come into direct competition with similar preparations of other houses?

By Mr. Bradford: Objection repeated.

A. Practically all the general line items are competitive items.

XQ73. In your answer to XQs. 33 and 34 (page 75) you named Lilly products which are similar to corresponding products of other houses. Are these "general line" products?

By Mr. Bradford: Objection repeated.

A. They are.

XQ74. You say that practically all the general line items are competitive. What other class or items are likewise competitive with the products of one or more other houses?

By Mr. Bradford: Objection repeated.

A. Empty capsules.

XQ75. Are Lilly's line of fluid extracts more or less competitive with similar products of other houses?

By Mr. Bradford: Objection repeated.

A. They are.

XQ76. Are Lilly's line of pills, competitive with similar products of other houses?

By Mr. Bradford: Objection repeated.

A. They are, except trade name pills such as Asbic and Aphrodisiaca.

XQ77. Are Lilly's line of soft mass pills and hypo tablets competitive with like products of other houses?

Objected repeated.

A. They are.

XQ78. How about Lilly's tablet line and the following lines, dispensing tablets, lozenges, elixirs, syrups, wines and cordials, tinctures, solid extracts, powdered extracts, and elastic filled capsules? Are all those classes competitive with corresponding products of other houses?

Objection repeated.

A. They are. These are all competitive products, for which Eli Lilly & Co., have endeavored to create Lilly's specifications on general line products by detail work and distribution of both samples and literature to physicians.

By Mr. Rawle: All the answer but the first two words is objected to as volunteered.

XQ79. Are Lilly's line of "specialities" competitive with similar products of one or more other houses? I hand you the Lilly catalogue, 1913-14?

By Mr. Bradford: Objection repeated.

A. In some instances they are competitive items, but in all instances there is some particular characteristic of the Lilly product which makes it more desirable than the others, and in a number of instances Lilly has adopted a special so-called trade name for same.

XQ80. You say the Lilly specialities are competitive in "some instances"? Are they not competitive in the majority of instances?

By Mr. Bradford: Objection repeated.

A. Not under their special names.

XQ81. Please explain your answer?

By Mr. Bradford: Same objection.

A. I mean that the competitive houses either do not or can not market similar preparations under Lilly's special name.

XQ82. But are they competitive irrespective of the Lilly special name or of any other special name? That is are they competitive because they are similar pharmaceutically?

By Mr. Bradford: Objection repeated.

A. Some are and some are not.

XQ83. But I have asked you in XQ80, whether the majority of Lilly "speciality" items are competitive with similar products pharmaceutically of other houses irrespective of mere difference of trade names. Please answer.

By Mr. Bradford: Objection repeated.

A. They are competitive inasmuch as the similar product can be used as substitutes for the Lilly product.

XQ84. In your experience have you had knowledge of any chocolate quinine product on the market other than Coco-Quinine, Lilly, and Quin-Coco, S. & H.?

By Mr. Bradford: Same objection.

A. I have.

XQ85. Have they been offered to you for sale?

By Mr. Bradford: Same objection.

A. They have not.

XQ86. When was it first brought to your attention that you were expected to testify in this case?

A. Friday, June 9th, 1916, when I met Mr. Bradford in Indianapolis, in Mr. Lynn's office, at the laboratories of Eli Lilly & Co.

XQ87. Before you became a Lilly salesman were you asked if you had any information about the matters you have been testifying about today?

A. No.

XQ88. What is your home town?

A. I was born in Houston County, Georgia, near Perry. I am now a resident of Atlanta.

XQ89. Before you entered Lilly's employ had you ever talked with any Lilly employee about this law case, or about the competition between Lilly Company and the Warner Company on the sale of their respective products?

A. Not until after I had been employed by Eli Lilly & Co.

XQ90. Since June 9th, or since your employment by Lilly, have you endeavored to find witnesses who would testify or who might testify in this case, or talked to any druggist about it?

By Mr. Bradford: Objected to as wholly immaterial, incompetent and irrelevant.

A. I have talked to a few personal friends in regard to the suit, but not in an endeavor to get them to testify in the case.

XQ91. Did you do this by direction of the company or of your own volition?

Same objection.

A. Of my own volition.

Cross-examination closed at 4.18 p. m.

By Mr. Bradford: As justifying my protest against the practice of defendant in disregarding the rules of evidence and seeking to make the witness his own and make a record in his own behalf in the time and at the expense of plaintiff, it is made of record that the direct-examination of this witness occupied forty-five minutes, and that the examination by counsel for defendant has occupied two hours and forty-five minutes, not more than twenty minutes of

which has been devoted to questions which can properly be classed as cross-questions or relating to facts brought out in the direct-examination.

Without waiving any objections to questions propounded by counsel for defendant, counsel for plaintiff proceeds with re-direct-examination.

Re-direct-examination.

By Mr. Bradford:

RDQ92. Please state the occasion of your being in Indianapolis on June 9th, 1916, and whether or not your meeting with me at that time was prearranged or accidental?

A. I was in Indianapolis at that time attending a salesman's convention held by Eli Lilly & Co, and the meeting with Mr. Bradford was accidental as I did not know he was there or to be there.

RDQ93. If you recall the conversation that took place between us at that time, please state it as fully as you can?

By Mr. Rawle: Objected to as irrelevant.

A. I was summoned from the convention hall by Mr. Caperton in order to meet Mr. Lynn, whom at that time I had never met, and was introduced to Mr. Bradford as the Lilly attorney, and who was present in Mr. Lynn's office, and knowing of the suit, informed both Mr. Lynn and Mr. Bradford that these facts were known to me, and I was then informed that I would be called as a witness in this case.

RDQ94. In the sale of Lilly products including general line items as well as specialties, is there or is there not a specific demand by the medical profession for the Lilly make?

By Mr. Rawle: Objected to as not rebuttal of cross-examination, or relevant or admissible.

A. There is a specification demand for Lilly general line products as well as specialities.

RDQ95. Explain how this demand is created by Eli Lilly & Co.?

A. By detail work which consists of sampling and distribution of literature on these products to the physicians, and also the liberal use of a mailing list of physicians whose names are supplied by the salesmen.

RDQ96. Have you ever as a Lilly salesman represented to a retail druggist that he could use any product in your line as a substitute for an item made by another house?

By Mr. Rawle: Objected to as not proper for rebuttal of cross-examination and as irrelevant.

A. I have not.

RDQ97. While in the retail drug business did you ever know of a Lilly salesman making such a representation to you or to any of your employees?

By Mr. Rawle: Same objection.

A. I have not.

Re-direct-examination closed—4.45 p. m.

F. M. King.

By Mr. Rawle: I here repeat my objections to this entire deposition as not proper for rebuttal, and repeat my notice of motion to strike the deposition from the record with costs.

By Mr. Bradford: To satisfy the curiosity made evident by a question propounded by counsel for defendant to the last witness near the close of his examination, it is admitted of record that plaintiff's salesmen have been requested to inform either counsel for plaintiff or plaintiff's general manager, Mr. Charles J. Lynn, of facts which they might run on to in their travels which would tend to disprove statements made by some of defend-

ant's witnesses. The last witness being a new man probably has had less opportunity for responding to this request than some of the older men.

By Mr. Rawle: Mr. Rawle asks plaintiff's counsel whether he is willing to say in his frankness as now manifested whether or not the Lilly sales force has as a general thing been directed to look about for witnesses in this case and report the names and circumstances of those discovered by them?

By Mr. Bradford: Mr. Bradford answers that in the discovery of evidence in this case, both prima facie and rebuttal, plaintiff has depended very largely upon its sales force to report facts believed to be material. It is regretted that by far the larger number of witnesses discovered, competent to testify, have declined so to do on the ground that they did not wish to be mixed up in litigation between two houses in neither of which they had any special interest and to neither of which they desired to show any partiality. The witnesses produced, however, and those to be produced, have in most instances been suggested by members of the Lilly sales force.

Mr. Rawle objects to the statement on the record beginning with "It is regretted" as being entirely improper.

Adjourned until 10 o'clock to-morrow, August 8th, 1916, at same place.

Atlanta, Georgia, August 8th, 1916—10 A. M.

Met pursuant to adjournment.

Parties present as before.

JESSE E. GREENE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Jesse E. Greene; age 35; Spartanburg, S. C.; retail druggist.

Q2. How long have you been in the retail drug business?

A. I have been in the retail drug business since 1899.

Q3. Do you buy goods from a house known as Wm. R. Warner & Co.?

A. I have bought from them.

Q4. Do you know a man who formerly worked for Wm. R. Warner & Co. as a salesman by the name of L. B. Hardy?

A. Yes, sir.

Q5. How long have you known Mr. Hardy?

A. For several years. I don't know the exact length of time; I should say six or eight years.

Q6. Do you recall any calls made on you by Mr. Hardy for the purpose of soliciting your order for the products of Wm. R. Warner & Co.?

By MR. RAWLE: Objected to as not proper for rebuttal.

A. Yes, sir; on several occasions.

Q7. Do you remember of any call by Mr. Hardy when certain items in the Warner line were offered to you as substitutes or replacers for items manufactured by other houses?

By MR. RAWLE: Objected to as not proper rebuttal, and as leading.

A. Not by Mr. Hardy.

Q8. Explain more fully, giving the facts covering any incident, such as suggested in my former question, either by Mr. Hardy or any other representative of Wm. R. Warner & Co.?

By Mr. Rawle: Same objections, also because the only question that possibly could be proper is as to what was said; incidents are not evidence.

A. On one occasion Mr. Hardy called with another gentleman, whom he introduced as Mr. McNulty. He introduced Mr. McNulty as sales manager or assistant sales manager and I went through the line with Mr. McNulty, who did the talking.

In the course of that interview he showed me two items and suggested that they could be used as substitutes for other preparations.

By Mr. Rawle: The answer is further objected to as not stating what was said, but merely the inference of the witness.

Q9. What were the items referred to in your last answer?

A. One was a pill containing aloin, belladonna, strychnine and ipecac, the same formula as lapactic pills manufactured by Sharp & Dohme, and the other was a chocolate syrup of quinine which he said was the same thing as Lilly's Coco-Quinine.

Q10. What did Mr. McNulty say respecting the two pills, that is, his pill, A. B. S. & I. and the lapactic pills, Sharp & Dohme?

By Mr. Rawle: Same objections, and as irrelevant.

A. He poured a few of the pills from his sample bottle into his hand and showed them to me, and called my attention to the fact that they were the same in appearance as the lapactic pills and that the formula was exactly the same.

He also named the price of lapactic pills and the

price of his pills, which were cheaper, and called my attention to the saving it would be to use his pills.

Q11. Did he tell you how you could dispense his pills, and if he did, what did he say?

By Mr. Rawle: Same objections.

A. He did not tell me how I could dispense his pills any more than I have already said.

Q12. Did he compare them with the lapactic pills?

By Mr. Rawle: Same objection and as leading.

A. This conversation took place in the front of the store, and we kept our lapactic pills in the rear in the prescription counter, and he had no opportunity to make an actual comparison, but he showed me his pills and said that it was the same in size, shape, color, and in general appearance and formula as the lapactic pills.

Q13. Had you any demand at your store for A. B. S. & I. pill Warner?

By Mr. Rawle: Objected to as not proper rebuttal and as irrelevant.

A. No, sir.

Q14. Have you ever had any demand at your store for A. B. S. & I. pill Warner?

Same objections.

A. No, sir.

Q15. Have you any demand at your store or have you ever had any demand at your store for Quin-Coco?

By Mr. Rawle: Objected to as not proper for rebuttal and as leading.

A. No, sir.

Q16. Have you ever seen a prescription written for Quin-Coco?

Same objections.

A. I don't recall ever having seen a prescription for Quin-Coco.

Q17. How do your customers and your physicians call for Coco-Quinine? By what name, I mean?

A. By the name of Coco-Quinine.

Q18. Do they ask for chocolate quinine frequently?

Same objections.

A. No, sir.

Q19. When did this incident occur, as near as you can recall? I refer to the time when Mr. McNulty called in company with Mr. Hardy and offered you their A. B. S. & I. pill and other items?

A. It occurred four or five years ago; I can't remember the exact date. In the Spring or Summer of 1912, I think it was.

Direct-examination closed at 10.30.

Cross-examination.

By Mr. Rawle (at 10.30, without waiver of objections):

XQ20. Did McNulty say to you that his Quin-Coco was similar to Lilly's Coco-Quinine or just like it?

A. Yes, sir.

XQ21. Meaning, I suppose, therapeutically the same preparations?

A. Yes, sir.

XQ22. And that I understand is the substance of what he said?

A. That and his reference to the saving of money by using it instead of Coco-Quinine.

XQ23. When was it first suggested to you that you should testify in this case, or when were you first told that there was a litigation between the Warner Company and the Lilly Company?

A. In the early part of this year, during the latter part of January or the first part of February.

XQ24. Who suggested the subject to you first?

A. I was told about the litigation by Mr. Hardy.

XQ25. How did you happen to meet Mr. Hardy; did he call on you?

A. He was in Spartanburg, my home town.

XQ26. Did he suggest to you or ask you to testify in this case?

A. At that time he did not. He asked me if I would if there was ever any occasion to do so.

XQ27. Who did you see next connected with the Lilly house on this subject?

A. I have not seen anybody else until I saw Mr. Bradford this morning.

XQ28. Then you came here pursuant to a letter, perhaps?

A. Yes.

XQ29. From whom?

A. From Mr. W. R. Bell.

XQ30. Who is he?

A. I didn't know him. His letter was written on Eli Lilly & Company's stationery and I presume that he is employed by them in some capacity?

XQ31. Where is it dated?

A. Atlanta, Georgia.

XQ32. When Hardy called on you last January or February did he discuss with you what had been said at the interview between him and McNulty and you as to which you have testified?

A. Yes, sir. He discussed it in a general way. The burden of Mr. Hardy's conversation was in regard to himself, his position in the matter. He said that he had made an affidavit that had been contradicted by another affidavit of one of Warner's men, and he was very much concerned about his veracity being questioned and at stake, and it was that feature of it that he talked about more than anything else.

XQ33. Did he state to you then his recollection of what McNulty had said at that interview?

A. Mr. Hardy did not lead me along in that. He only agreed with me when he found that I remembered

these things, and told me that after I had made these statements that I was right, that he remembered them the same way.

XQ34. How long did he talk to you at that call?

A. I suppose fifteen or twenty minutes.

XQ35. Did you buy any of those two Warner products from McNulty?

A. No, sir.

XQ36. Have you ever stocked either of those products of Warner?

A. No, sir.

XQ37. How many bills of goods have you bought from Warner?

By Mr. Bradford: Objected to as not cross-examination; as immaterial, incompetent and irrelevant.

A. Not very many direct, I don't know exactly how many. I have not bought any of their merchandise except through a jobber in a long time.

XQ38. Since the McNulty interview, how often, approximately, have Warner salesmen solicited your trade?

A. Approximately three or four times a year. I mean by that, on their combined line, not on their pharmaceuticals alone.

XQ39. At the McNulty interview did McNulty offer you substantially the entire line of the Warner company and their various lines?

A. Yes, sir.

XQ40. Didn't it consist of a great many thousand items?

By Mr. Bradford: Objected to as calling merely for opinion.

A. It was an unusually extensive line; I don't know how many items.

XQ41. How long did the interview last?

A. I should say a half or three-quarters of an hour.

XQ42. Do you know of any other drug house that

markets a preparation therapeutically similar to Sharp & Dohme's lapactic pills?

By Mr. Bradford: Objected to as not cross-examination; as incompetent, immaterial and irrelevant.

A. Yes, sir; I know of more than one, unless they have recently discontinued.

XQ43. I mean, did you at the time of the McNulty interview know of such?

Same objection.

A. Yes, sir.

XQ44. Please name the drug houses and the respective names of their products?

Same objection.

A. The only one that I am absolutely positive about now is Park, Davis & Co. The reason my memory is clear on that is because I worked for them at one time.

XQ45. Which makes of that kind of pill do you carry?

Same objection.

A. The one made by Sharp & Dohme.

XQ46. Does Lilly market a pill of that kind, therapeutically?

Same objection.

A. I don't know positively, but I think that several of the larger manufacturing pharmaceutical chemists do.

XQ47. Have you ever stocked that kind of pill made by any other house than Sharp & Dohme?

Same objection.

A. I don't recall having done so.

XQ48. If you had a call for Quin-Coco, whose preparation would you understand it to be?

A. Now I would understand it to be Warner's.

Until I heard the name discussed here I did not know what they called their chocolate syrup of quinine.

XQ49. When your customers over the counter call for some kind of a sweet chocolate preparation, by what various names have they called for it, including the colored population?

A. In the community where I live the colored population and very few of the laity are familiar with any chocolate preparation of quinine. It is mostly dispensed on physicians' prescriptions.

XQ50. If you have had calls over the counter by what names have they been?

A. We have occasional calls for Coco-Quinine.

XQ51. Any other name?

A. No, sir.

XQ52. Do you sell Coco-Quinine in the original package, or do you sell it in your own bottles with your own labels?

A. Usually in our own bottles, with our own labels. All prescriptions are put up in that way. We sell it all in that way because we only carry it in large size packages, five pints or gallons.

XQ53. How large is the population of Spartanburg and how many drug stores are there in the place?

A. Spartanburg is approximately 20,000 population with eight or nine drug stores.

XQ54. How far from Atlanta is it?

A. I don't know, it is about five hours on the train.

XQ55. How long have you been here on this business?

A. I came here this morning about 8.45 Atlanta time.

XQ56. When are you going home?

A. I intend to go home tonight.

XQ57. Have you seen Hardy today?

A. Yes, sir; in the lobby of the hotel.

XQ58. What other Lilly man have you seen?

A. Mr. Bradford.

Cross-examination closed at 11.20.

Re-direct-examination.

By Mr. Bradford:

RDQ59. Have you been the buyer for your store continuously during the last four or five years or since your first interview with McNulty about which you have testified?

A. I have been with the exception of a period from January 15, 1916, to June 20th, 1916.

RDQ60. Was there any circumstance at the McNulty interview which impressed it upon your memory and enables you to recall the facts as related regardless of any suggestion by Mr. Hardy or any one else, and if so, please state?

By Mr. Rawle: Objected to as not proper rebuttal or re-direct.

A. Yes, sir; there was an incident that causes me to remember his visit. As stated before, he called on us with Mr. Hardy; Mr. McNulty did all the talking. I endeavored to get out of going through the entire line on account of it being so extensive and taking so long, but Mr. McNulty was very persistent and insisted on showing me through the entire line. He first showed me samples of various pharmaceuticals including the pills and the chocolate quinine syrup that we have been talking about. After finishing that line we looked through his catalogue of non-secrets. I told him before going into the non-secret line that we could not use anything in it as we were local agents for the Rexall goods which pretty thoroughly covered the non-secret field. But he insisted and after turning several pages of the catalogue, probably half through it, my attention was called to a package of Rat and Roach Paste; I have forgotten their name for it, but the style of the package was similar to that of the Stearns Electric Rat and Roach Paste. I gave Mr. McNulty an order for a small quantity of this paste. I don't remember the amount. Then he turned through the rest

of the catalogue and he called my attention to different items that were in it, but I did not see anything else that I wanted and after we had finished this book I told Mr. McNulty to either send this small package I had given him an order for by mail or put it in with a package coming to some other local druggist.

When Mr. McNulty found that that was all I was willing to buy he seemed to get mad and said to me in a tone that suggested anger or impatience that he did not call that an order, and asked me if I did. I told him I didn't care what he called it. He made some remark indicating that he would not send the order in. I told him not to send it in and if he did I would not accept it if he shipped it. In the meantime I had gotten a little mad and seeing my hat near me on the counter I got it and left the store, leaving Mr. McNulty and Mr. Hardy in there packing up their goods. I have never seen Mr. McNulty since.

Re-direct-examination closed.

By Mr. Rawle: Notice of motion to strike out this deposition is given for reasons above set forth.

Deposition closed.

Jesse E. Greene.

Adjourned until tomorrow at Hermitage Hotel, Nashville, Tenn., at 10.30 A. M., August 9th, 1916.

By Mr. Rawle: Mr. Rawle calls attention to the fact that the evidence today has consumed only an hour and twenty minutes of the day, and while appreciating the difficulties of plaintiff's counsel, he hopes that the witnesses can be produced more numerously and the proceedings speeded, as this is a very expensive trip.

By Mr. Bradford: Mr. Bradford regrets that two of the witnesses whom he had expected to examine

here have been unable to attend, one because of absence from home on his vacation, another because his clerk is away on a vacation, and he calls the attention of defendant's counsel to the fact that his original arrangements for taking these depositions contemplated a start of about a month ago and that postponement was wholly for the accommodation of counsel for defendant, which postponement has resulted in materially disarranging our plans and making it impossible in all cases to get the witnesses as we had originally expected. He is assured, however, that proceedings will be speeded as much as possible even though it be necessary in some cases, as in this, to probably lose the benefit of the depositions by some witnesses in contemplation.

Nashville, Tenn.,
Hermitage Hotel,
August 9th, 1916, 10.30 A. M.

Met pursuant to adjournment.

Parties present as before.

DAVID J. KUHN, a witness called by and on behalf of plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. David J. Kuhn, age 48, 1900 State Street, Nashville, Tenn., proprietor of Kuhn's Pharmacy, 1123 Cedar Street. I have been in the retail drug business in Nashville for twenty years. I am now president of the State Pharmaceutical Association of the State of Tennessee and am also President of the Nashville Drug Club.

Q2. Are you accustomed to buy goods of Wm. R. Warner & Co., defendant in this case and if so, how long have you dealt with that house?

A. Yes, sir. I have dealt with them for quite a number of years. I couldn't say definitely just how long, but by referring to my invoices I could give it definitely.

Q3. Have you dealt with them as long as since 1908?

A. Yes, sir.

Q4. Please give the names of salesmen who solicited your order for goods on behalf of Wm. R. Warner & Co.?

A. Mr. Kelton, I think it is Alva Lee Kelton. There is another one who is not now in this territory but in the Memphis territory I think. He was with them for quite a while, a very short name.

Q5. A Mr. Duvall?

A. Yes, sir; that is the name.

Q6. Has any other representative of the Warner house ever solicited your orders for goods?

A. The man succeeding Mr. Duvall whose name I do not recall.

Q7. Have any of the proprietors or managers or assistant sales-manager ever called on you in company with these salesmen?

A. Mr. Pfeiffer called on me in company with Mr. Kelton.

Q8. Which Mr. Pfeiffer?

A. I don't know the initials, that gentleman right over there. (The witness points to Mr. Henry Pfeiffer, who is here present.)

Q9. Did Mr. Henry Pfeiffer, the gentleman present, to whom you have referred, ever solicit your orders for goods, and if so, state the circumstances and what Mr. Pfeiffer said to you?

By Mr. Rawle: The question is objected to as not proper for rebuttal.

A. The only thing I remember was in the sale of a perfume which they manufactured under the title of "Florita" perfume, he saying that it was the same article as Allen's "Janice" perfume.

By Mr. Rawle: The answer is further objected to as irrelevant.

Q10. What did Mr. Pfeiffer say to you in respect to this Florita perfume and how it could be used?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant.

A. That it was an article costing less than the Janice perfume; that very few people could tell the difference between the two. Upon a test made by myself I found it to be so.

Q11. How long have you known Mr. Kelton?

A. I have known Mr. Kelton about sixteen or eighteen years.

Q12. Do you know of his reputation for truth and veracity and if so, what is it?

By Mr. Rawle: Objected to as improper for rebuttal, as irrelevant and as inadmissible, and because no foundation has been laid for the question.

A. I have never heard anything derogatory against him in my life, so far as his truthfulness is concerned. About the only thing that I ever heard was of his being mixed up in some case with a woman in Memphis, which by the way was only hearsay with me.

Q13. My question only referred to Mr. Kelton's reputation for truthfulness? Is he a man that in view of your long acquaintance with him whose word you believe is entitled to be believed?

By Mr. Rawle: Objected to as inadmissible, as incompetent, irrelevant and immaterial.

A. I certainly do.

Direct-examination closed at 11 A. M.

Cross-examination.

By Mr. Rawle: (at 11 A. M. without waiver of objections):

By Mr. Rawle: Above objections are here repeated and notice given of a motion to strike the deposition from the record.

XQ14. Who first mentioned this lawsuit to you and spoke to you about it or about testifying in it?

A. I don't remember.

XQ15. Who arranged with you to come here today?

A. Mr. Bradford called me up.

XQ16. Mention anybody connected with Lilly who has talked with you about this case?

A. No one.

XQ17. No Lilly salesman?

A. Not a single one.

XQ18. Kelton?

A. I don't remember, I would not say that for sure.

By Mr. Bradford: For the information of counsel for defendant counsel for plaintiff states that he had an interview with Mr. Kuhn a few months ago and asked him in reference to this incident which had been told to him by Mr. Kelton. On learning that Mr. Kuhn remembered the incident he asked him to testify for us if at some later date we asked him to do so. He has had no further communication with Mr. Kuhn until he called him on the 'phone at his store about forty minutes ago.

XQ19. In view of this statement by Mr. Bradford do you remember that first interview with Mr. Bradford?

A. I do.

XQ20. Who was with him?

A. I think Mr. Kelton was here, I am not sure, it might have been Mr. Madden. I am not sure.

XQ21. Who is Madden?

A. Mr. Madden is the representative of the Eli Lilly Company.

XQ22. Do you mean that either Madden or Kelton was at the interview?

A. I think one of the two, I would not say for sure who it was.

XQ23. I understand you to testify that one of the two was present at the interview, but that you do not remember which one. Will you think right hard for a moment and see if you can not find somewhere in your memory which one of the two it was?

A. No, I don't. It has been several months ago and would not want to make a statement that I could not absolutely verify.

XQ24. Where did the interview with Mr. Bradford take place?

A. At the Hermitage Hotel.

XQ25. Who asked you to call on Mr. Bradford?

A. I don't remember. I was 'phoned at the store and asked if I would come to the Hermitage Hotel, that a gentleman by the name of Mr. Bradford would like to meet me.

XQ26. And you then called at his room in the hotel?

A. I did.

XQ27. Can't you now remember whether it was Kelton or Madden?

A. I do not.

Deposition closed.

DAVID J. KUHN.

MR. RAWLE asks Mr. Bradford if he will explain on the record his own recollection of this interview.

By MR. BRADFORD (responding): For the information of counsel for defendant, but without admitting that it can have any possible pertinency in the record, and further, without admitting that counsel for defend-

ant has any right to the information, or that it is any of his business, but purely as a matter of courtesy to him, and in response to his request, counsel for plaintiff makes the following statement:

After referring to a memorandum to ascertain the date that he was in Nashville on either February 15th or 16th, 1916, that he had an interview with Mr. Alva Lee Kelton, a witness who has testified for plaintiff in this case; that he showed Mr. Kelton some of the testimony that had been given by witnesses for defendant referring to testimony, or statements in the testimony, by witness Kelton when testifying for plaintiff; that in discussing questions which arose at that interview Kelton informed plaintiff's counsel of the incident which took place in Mr. Kuhn's store, about which Mr. Kuhn has just testified; that he then asked Kelton if it would not be possible for him to have a talk with Mr. Kuhn; that, as counsel recalls, it was Mr. Kelton who 'phoned Mr. Kuhn and asked him if we could see him at his store or if he was coming uptown if he would not stop at the Hermitage Hotel and meet counsel for an interview; Mr. Kuhn, so Mr. Kelton reported, replied that he was coming up town to go to bank and it would be more convenient for him to stop at the hotel than to wait for them at his store; that Mr. Kuhn called in response to the request and the interview before referred to took place. Counsel is under the impression that when Mr. Kuhn arrived Kelton introduced him and after a few words excused himself to keep an engagement at his office, for which he was then overdue, and that most of his interview with Mr. Kuhn was in Kelton's absence, but as to this his memory is not clear and he cannot state positively. This was in the forenoon and Mr. Kelton returned later and spent a considerable part of the afternoon with counsel.

Mr. Rawle having omitted to ask the last witness Kuhn when the interview with Mr. Henry Pfeiffer took place is permitted to state on the record that Mr.

Pfeiffer states to him that it was in 1906 or before and that he has not been in Nashville since 1906.

By Mr. Bradford: After the close of the deposition witness having given plaintiff's counsel some additional information which is believed to be pertinent and rebuttal evidence, counsel for plaintiff asks some additional direct questions as follows, making the same a part of the direct-examination, subject, of course, to further cross-examination:

By Mr. Bradford:

Q28. Did Mr. Duvall, as representing Wm. R. Warner & Co., ever offer you a preparation called "Quin-Coco," and if so, what were his statements to you when soliciting your order for this item?

By Mr. Rawle: Objected to as not proper rebuttal.

A. Yes, sir; he did, stating at the time that Quin-Coco was the same preparation as Coco-Quinine, Lilly, and also he presented me a sheet about the size of this blotter, about four by eight inches, in which he had Quin-Coco listed and directly opposite Quin-Coco, Lilly's Coco-Quinine. In fact this list was presented to me each and every time that I made a purchase from Wm. R. Warner & Co.

Q29. Was it a list similar to the list I hand you? (Showing witness a copy of Plaintiff's Exhibit, Document No. 3.)

A. Yes, sir; folded as that is.

Q30. Did Mr. Kelton ever offer you the same preparation and if so on what statements?

By Mr. Rawle: Objected to as not proper for rebuttal.

A. Mr. Kelton was the first man who ever offered me Quin-Coco for Lilly's Coco-Quinine, saying that it was the best substitute of the kind ever produced.

Q31. Was Mr. Henry Pfeiffer present when Mr. Kelton made this statement?

A. That I will not state for sure. I never met Mr. Pfeiffer but once at my store in company with Mr. Kelton.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiving objections):

XQ32. Did Kelton say to you in effect that Quin-Coco was the same preparation as Coco-Quinine?

A. Yes, sir.

XQ33. And cheaper?

A. Yes, sir.

XQ34. Is that the substance of what he said to you?

A. To the best of my recollection.

XQ35. Kelton did not make you any dishonest proposition as to buying his Quin-Coco did he?

A. I don't understand the question. What do you mean by the term "dishonest"?

XQ36. I mean did Kelton make you any proposition in regard to his Quin-Coco that would not be ethical according to the ethical standards of the drug business? Did he suggest to you that you should do anything that was not ethical?

A. He suggested that inasmuch as Quin-Coco was so much cheaper than Lilly's Coco-Quinine and containing the same per cent. of quinine to the teaspoonful as Lilly's, he thought I would certainly be saving money in handling Quin-Coco instead of Lilly's Coco-Quinine. If he had not made this suggestion I am sure I would not have invested all these years buying Quin-Coco from his firm.

Deposition closed.

David J. Kuhn.

By Mr. Rawle: Notice is given of motion to strike out this deposition.

Adjourned to meet tomorrow, August 10th, 1916, at 9.30 A. M., at same place.

Nashville, Tenn.,
August 10th, 1916—9.30 A. M.

Met pursuant to adjournment.

Parties present as before.

GUS A. BLODAU, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Are you the same Gus A. Blodau who has heretofore testified in this cause on behalf of plaintiff?

A. I am.

Q2. E. B. Duvall, a witness who testified in this case on behalf of the defendant, was asked certain questions respecting statements made by you in your testimony for plaintiff. Among other things in answer to Q27, page 297, Defendant's Record, Mr. Duvall stated in answer to a question as to what was his talk with you on Quin-Coco:

> "When I talked to Mr. Blodau on Quin-Coco it was on the quality of the preparation and I also brought in the price of the product. I told Mr. Blodau the quantity of quinine that our preparation contained, the smoothness of it, that he would be able to pour it into very small neck bottles, it would give absolute satisfaction where any quinine was necessary. My talk also to him was the question of customers that wanted preparations for malaria and bad colds and things of that nature where Quin-Coco could be sold."

In Mr. Duvall's interview with you did he say anything to you about the smoothness of the preparation Quin-Coco or that you would be able to pour it into very small neck bottles?

By MR. RAWLE: Objected to as not proper

for rebuttal, as leading, and as irrelevant, the neck of the bottle not being related to any issue in this case.

A. He did not refer to the Quin-Coco in regard to its being a fluid easily poured into a bottle; that is, as an individual characteristic of that particular thing.

Q3. Did Mr. Duvall at that interview give you any talk on the question of customers that wanted preparations for malaria and bad colds and things of that nature?

By Mr. Rawle: Same objections.

A. No, he did not speak to me in regard to anything of that character.

Q4. Mr. Duvall also states in answer to XQ93, page 307, Defendant's Record, that he is certain that you did not intend in your testimony to lay any stress on the statement made by you that you understood him to intend that you should use Quin-Coco in preference to Coco-Quinine. What have you to say as to this?

By Mr. Rawle: Objected to as not rebuttal.

A. If that was not his intention I really can not understand his idea in showing me the Quin-Coco as I had had no calls for Quin-Coco or chocolate quinine, that the only name by which the chocolate quinine preparation has been called for in my store to the best of my knowledge is Coco-Quinine and as it (chocolate quinine) or Quin-Coco as it is called, would not interest me owing to the fact of having no sale for it under those names.

Q5. Your testimony as previously given then was given intentionally and is in accordance with your clear understanding of Duvall's statements at the interview in question?

By Mr. Rawle: Objected to as not rebuttal and as an incompetent and inadmissible question to ask the witness.

A. I have no reason whatever to state anything but a true answer to all questions that have been asked me at any time before this or now in this case.

Q6. Mr. Duvall also stated in answer to XQ85 that he never mentioned a competitor's product until the subject was first mentioned by his customer? What have you to say as to this?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant and inadmissible.

A. If I am not mistaken his method of introducing this Quin-Coco preparation was by asking me whether I used Coco-Quinine, taking the sample out and holding it up right before me, saying it is a preparation at a much less price, being virtually identical with Coco-Quinine. Otherwise I could not have known that he had had a chocolate quinine preparation among his samples.

Q7. Who mentioned Coco-Quinine first, you or Mr. Duvall?

By Mr. Rawle: Same objection.

A. Mr. Duvall mentioned the fact first as I stated in my last answer. It stands to reason that I would not have any occasion to mention Coco-Quinine unless he approached me with the article that he had.

Q8. It has been stated by some of defendant's witnesses that this preparation is called for by customers more frequently by such names as "Chocolate Quinine," "Sweet Quinine," "Syrup of Quinine," etc. What is your experience as to this?

By Mr. Rawle: Objected to as not rebuttal.

A. I have had no calls for "Sweet Quinine" of that chocolate quinine preparation. "Syrup of Quinine" if called for would be a clear mixture of quinine with orange syrup or lemon syrup, as the flavor may be, and can have no similarity to this preparation. In regard to calls on my precriptions I have yet my first

time to see a prescription for Quin-Coco since I have been in business. My prescriptions run from six to eight thousand a year.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 10.10 A. M., without waiver of objections):

XQ9. You have been a fairly steady customer of Wm. R. Warner & Co., have you not, for the last three or four years?

A. Yes, I have bought considerable amount of goods from them.

XQ10. And their salesman has called on you probably four times a year?

A. He has, about that time.

XQ11. That would be about twelve calls. To which of the twelve calls by Duvall have you been referring?

By Mr. Bradford: Objected to as not a definite or intelligible question, nothing having been said about twelve calls or the period of time in which Duvall served as salesman in Mr. Blodau's territory.

A. I really could not positively state which call. Mr. Duvall I have always thought a good deal of and was always glad to see him in the store and whenever possible I always gave him an order and he did not refer to the substitution proposition, as I termed it, after he discovered my standing on substitution. It was not the last time or two that he was there.

XQ12. Might he not have said to you, holding up his bottle of Quin-Coco, "Do you want any of that," and might you not have replied "No," that you kept only Coco-Quinine.

A. In a large line of pharmaceutical samples a druggist, as a rule, does not jump at the nature of

the contents of a bottle unless he is told what it contains, or he sees the label on the bottle.

XQ13. You have not yet answered my question asking you at which of the interviews with Duvall, the conversation took place which you have testified to. Please do so?

By Mr. Bradford: Objected to as improper.

A. As I have answered only such things that are clear to my mind it is almost an impossibility for me to remember exactly what trip that he displayed this Quin-Coco to me with the recommendation for me purchasing same, as from your own question to me in the form of a statement you say and I admit it that he has called on me for a few years, making four trips a year. This naturally renders it almost an impossibility to remember exactly the trip, but I can state, it was in the early part of his visits to me.

XQ14. When did his visits begin?

By Mr. Bradford: Objected to as immaterial, incompetent and irrelevant.

A. I would judge that I can positively say, that he has called on me for about four years, with the exception of the last four trips. I believe that they have had two different salesmen that have called at my store since he has quit calling on me.

XQ15. Did he at all or most of these various calls offer you the entire Warner line and go through it with you?

A. Every time that he has been to see me I have tried to give him an order as the house has always treated me very nicely and he is an agreeable gentleman. It was unnecessary for him to minutely pick out every sample that he had as I was and am very familiar with the majority of the goods handled by the Wm. R. Warner Co. His line of samples embraces not only Wm. R. Warner's products, but at least six or eight other concerns that the Pfeiffer Chemical Company has absorbed. And it is no trouble to find shorts

whereby you can favor their representative with an order.

XQ16. But was it not his practice at these interviews to mention a considerable number of articles of the Warner and other lines and solicit an order for them?

A. It stands to reason that any representative who is calling on you to sell you goods would naturally show you some samples that he had for that purpose carried around with him.

XQ17. At the interview when he took out his sample bottle of Quin-Coco and held it up right before you, was that the first time you had ever heard of Quin-Coco, marketed by Warner & Co.?

A. The first time that I ever heard of Wm. R. Warner & Company or their representatives having in their sample case Quin-Coco was when Mr. Duvall had occasion to show it to me. I did not know that they put up a preparation of anything like it.

XQ18. How long did that interview last?

A. As a general thing his time spent at my store varies from half an hour to an hour and a half, owing to the fact that we are continually interrupted by some of my attention being diverted to the trade, but on this particular occasion I can not give you the exact amount of time that he spent in my store.

XQ19. I think you said that you and Duvall were good friends?

A. By "good friends" in an instance of this kind I mean a mutual good feeling between the salesman and myself, and not good friends as one would imply by a continued association.

XQ20. But in dealing there was mutual respect between you?

A. In dealing with Mr. Duvall I respect him as much as any salesman that comes in my house and also consider the house of Pfeiffer Chemical Company one of the cleanest and best I have ever had dealings with.

XQ21. When you first testified here about a year ago, what Lilly man had previously talked to you about this case?

A. Mr. G. W. Madden.

XQ22. Since you testified what Lilly man has talked to you about the case and when and how often?

A. This same man spoke to me and I told him I was sorry that I had anything whatever to do with it, and my explanation was exactly the reason that I thought a great deal of Duvall and I did not care to get Mr. Duvall in any trouble.

XQ23. Have you ever talked to Alva Lee Kelton about this case?

A. No direct conversation pertaining to this case in regard to what was said has ever taken place between Mr. Kelton and I. He did ask me if I had testified and how long they kept me up there. In regards to what was said by either side I know of nothing of that character in the conversation.

XQ24. Have you seen Madden here today?

A. I have.

XQ25. Is he here in this hotel?

By Mr. Bradford: Objected to as absolutely immaterial, incompetent and irrelevant. Counsel is advised, however, that Mr. Madden is in the next room and if he wants to see him we will call him in and introduce him.

A. If he is I can not see him. He might be here and he might be gone.

Deposition closed at 10.55.

Gus A. Blodau.

By Mr. Rawle: Notice is given of motion to strike the last deposition from the record for reasons given.

Adjourned to meet tomorrow, Friday, August 11th, 1916, at 11 A. M., at the Hotel Peabody, Memphis, Tenn.

Memphis, Tenn.,
Peabody Hotel,
August 11th, 1916, 11 A. M.

Met pursuant to adjournment.

Parties present as before.

By agreement of counsel adjourned to meet at same place tomorrow, Saturday, August 12th, 1916, at 10 A. M.

August 12th, 1916, 10 A. M.

Met pursuant to adjournment.
Parties present as before.

ELZIE H. WHITE, a witness called by and on behalf of plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Elzie H. White, age 26, McNary, La., pharmacist, in retail drug business. I am manager of the drug department of the Cady Lumber Company, known as the McNary Pharmacy.

Q2. How long have you been in the retail drug business and where?

A. I have been in the drug business since 1908, but not continuously. I stated at Dotson, La., in 1908, as a clerk in the Dotson Drug Store. I worked there until 1909. I then went to school until the spring of 1910. I then went to Winfield, La., and worked in a drug store for Whitley & Thomas as a general clerk and assistant in filling prescriptions. I worked there

until October, 1911. I then left to go to school again. I attended school for two years then, working during vacation. After I finished school I worked for Shreveport Drug Company, at Shreveport, La., until February, 1914. I then went back to Winfield and worked until June, 1914, with the same store but which was then known as the Winfield Drug Company. When I left there I went to the place where I am now working and have been there ever since.

Q3. Do you know a gentleman by the name of James W. Wilkins and if so where have you known him and what are his duties?

A. Yes, sir; I know him. I have known him since about 1910. He is a drug salesman for Wm. R. Warner & Co.

Q4. Were you ever present at an interview between Mr. Wilkins and Mr. John F. Whitley at which Wilkins solicited an order for the Warner goods?

A. Yes, sir; three or four times.

Q5. Were you ever present at such an interview when Mr. Wilkins, among other items, offered Mr. Whitley a preparation known as Quin-Coco, and if you were what did Mr. Wilkins say to Mr. Whitley about this preparation?

By Mr. Rawle: Objected to as not rebuttal, John F. Whitley referred to by the witness having been already examined on behalf of the plaintiff in the prima facie case (p. 599).

A. I was, and Mr. Wilkins showed this preparation to us, explaining the merits of it, stating that he could sell this preparation to us to be used as Coco-Quinine at a less expense and a saving on the original Coco-Quinine.

Q6. Do you recall Mr. Wilkins' exact language and if you do state it as well as you can?

By Mr. Rawle: Same objections.

A. The way I remember it he showed us the prep-

aration stating that it contained two grains of quinine sulphate to the teaspoonful and that he was selling only to the trade in general for the Coco-Quinine preparation and that he could sell it to us in gallon lots at about the same cost as we had been paying for the five pints of Lilly's Coco-Quinine.

Q7. Do you know a man by the name of Henry J. Gonzales?

A. I do.

Q8. How long have you known him and what is his business?

A. I have known him for about six years, I suppose. When I first knew him he was salesman for Park-Davis & Co. I have since known him as salesman for the Wm. R. Warner & Co.

Q9. Has Mr. Gonzales ever solicited your order for Quin-Coco since he has been representing Wm. R. Warner & Co., and if so what did Mr. Gonzales say to you about this item?

By Mr. Rawle: Same objections.

A. Yes, sir; he has solicited my business for it. He just asked if I could use his Quin-Coco, that it was a saving in price over Lilly's Coco-Quinine, stating that I had used it before, to his knowledge, and he knew I could use it at the place where I was now for Coco-Quinine. He also at this time stated that he could sell me his preparation, Quin-Coco, in gallon lots, to take the place of Coco-Quinine, as Lilly had taken their Coco-Quinine off the market in gallon lots, due to the price of quinine sulphate at that time, which was a high price.

Q10. Did you buy the item of Mr. Gonzales?

A. Yes, sir; I bought it from him. I bought a gallon of it.

Q11. Did you sell it?

Same objections.

A. Yes, sir.

Q12. How did you label it when you sold it?

Same objections.

A. I used the regular label, regular printed label of Coco-Quinine.

Q13. When did the interview between Mr. Wilkins and Mr. Whitley concerning which you have testified, take place, as near as you can remember?

A. In the latter part of 1910.

Q14. Did Mr. Whitley buy the preparation Quin-Coco?

A. Mr. Whitley's partner did, Mr. Thomas.

Q15. How was it dispensed at Mr. Whitley's store or at the Thomas-Whitley Store?

By Mr. Rawle: Same objections.

A. Dispensed in the general way as we had always dispensed Coco-Quinine.

Q16. Both on call and on prescription?

By Mr. Rawle: Same objections and because the act of the druggist cannot affect the right of the defendant.

A. Dispensed on calls I am positive. I was not a regular prescription clerk at that time and I can't state as to prescriptions.

Q17. In all your experience as a clerk and druggist have you ever had a customer call for Quin-Coco?

Objected to as not rebuttal and as irrelevant.

A. I have not.

Q18. Have you ever seen a prescription written for Quin-Coco?

A. No, sir.

Q19. As I understand it you fill the prescriptions at your present store?

A. I do.

Q20. And assisted in filling prescriptions at some of the other stores?

A. Yes, sir.

Q21. Have you ever had customers ask for "Chocolate Quinine"?

A. I have had few calls for chocolate quinine. Most of my calls have always been for Coco-Quinine.

Q22. About what proportion of the calls are for "Chocolate Quinine" and what for "Coco-Quinine"?

A. I don't believe I have ever had over a half a dozen calls for chocolate quinine in all of my drug experience. As a rule the customers always call for Coco-Quinine.

Q23. Are these calls frequent?

A. Yes, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 11 A. M. without waiving objections):

XQ24. Who first called your attention to testifying in this case?

A. Lilly's traveling salesman was the first one, Mr. Broussard.

XQ25. When.

A. In the early part of 1915, I think.

XQ26. Prior to the first of April?

A. I would not say positively it was prior to that. It was in the spring of the year.

XQ27. Are you sure it was prior to July 1st, 1915?

A. Yes, sir.

XQ28. Who spoke to you about coming here this time to testify?

A. Mr. Whitley.

XQ29. Your employer?

A. Not now; my former employer, Mr. John F. Whitley.

XQ30. I understood you to say that the interview between Wilkins and Whitley to which you have testified, took place the latter part of 1910? Have you

talked to Mr. Whitley as to what was said by Wilkins at that interview?

A. Yes, sir.

XQ31. When?

A. This year.

XQ32. Recently?

A. Yes, sir; recently.

XQ33. When you talked to him did you know that he had testified as a witness in this case?

A. When I talked to him about it he asked me if I remembered about this transaction he had at that time and I told him that I did.

XQ34. What did he say?

A. He told me that had testified to this incident that had happened in 1910, the latter part, about the quinine preparation.

XQ35. Did you discuss with Whitley what had been said by Wilkins at that interview?

A. We just discussed the transaction that was made in buying the quinine preparation about how it was to be used in place of Coco-Quinine.

XQ36. Did you discuss with him what had been said by Wilkins at that interview. If you did, say so, if you did not, say so?

A. No, sir; we did not discuss the exact conversation that Wilkins had with us at the time Wilkins sold the preparation to us.

XQ37. What I want to know is whether Whitley when talking with you recently about it gave you his version of what Wilkins had said in 1910?

A. No, sir.

XQ38. Did Whitley tell you what he had testified to as having been said by Wilkins in 1910?

A. He told me that he had testified to buying this Quin-Coco and using it for Coco-Quinine and that this had been denied by Mr. Wilkins and asked me if I remembered the transaction and I told him that I did remember it.

XQ39. Did Wilkins tell you that Quin-Coco was the same preparation as Coco-Quinine and was cheaper?

A. He did not tell me personally, he told Mr. Whitley and Mr. Thomas.

XQ40. And that was the substance of what he told them was it not?

A. That was the substance of what I heard at that time, and that we could use his Quin-Coco for Coco-Quinine, at a considerable saving.

XQ41. How often have you seen Wilkins since 1910?

A. I have not seen Mr. Wilkins but once that I remember since I left Winfield in 1911.

XQ42. Did you always find him a square man?

A. What dealings that I had with him were limited as I did not do all the buying at that time.

XQ43. So far as you knew him did you consider him a square man?

A. Yes, sir.

XQ44. When Wilkins asked you or your employer to buy his Quin-Coco and use it in place of Coco-Quinine, did you consider he was making any kind of a dishonest proposition?

By Mr. Bradford: Objected to as incompetent, immaterial and irrelevant and as merely calling for opinion.

A. At that time I did not give the matter any consideration in that light.

XQ45. How long was this talk with Wilkins?

A. Just during the regular business conversation, not over selling a bill of goods, it was not over half a day selling the whole bill.

XQ46. Do you mean that Wilkins was there for half a day?

A. I think he was there for half a day, during his visit to the store selling a regular bill of goods, selling the line that he sold.

XQ47. How long did the conversation last in regard to Quin-Coco as one of the items?

A. It was very brief, he just merely explained the preparation as being used and selling it to the trade as Coco-Quinine, and its being used as such.

XQ48. Did the talk about Quin-Coco take as long as three minutes?

A. Yes, I am sure that it took that long or longer.

XQ49. Did Wilkins say to you specifically that on calls for Coco-Quinine you could sell Quin-Coco to the customer without telling him anything about it?

A. In his conversation with the purchaser of the drugs he did; he stated that this Quin-Coco was being sold and successfully used as Coco-Quinine.

XQ50. When a customer calls for Coco-Quinine and you sell him Quin-Coco, without telling him, do you consider that honest or ethical in the drug business?

A. It being sold to us with the assurance that we could sell it as Coco-Quinine to the trade, I consider it all right.

XQ51. Don't you know that it is considered dishonest in your business when a customer calls for a certain preparation to sell him another preparation without telling him that you are doing so. Please answer the question, yes or no?

By Mr. Bradford: Objected to as irrelevant and immaterial.

A. No, I don't know that it is.

XQ52. What other Lilly man have you talked to about this case, or seen in relation to it except Broussard?

A. No other Lilly man.

XQ53. Since you came to Memphis have you seen R. L. Winchester, a Lilly salesman?

A. I have not.

XQ54. Who asked you to come here today?

A. Mr. Whitley asked me to come here.

XQ55. When?

A. It has been about a week ago I suppose.

XQ56. Did he say to you who had asked him to ask you?

By Mr. Bradford: Objected to as irrelevant, immaterial and incompetent.

A. Mr. Whitley did not recall any individual by name when he spoke to me about the case. He referred to it as the Lilly case.

XQ57. How do you happen to remember for nearly six years what Wilkins said to Whitley about Quin-Coco?

By Mr. Bradford: Objected to as incompetent, irrelevant and immaterial.

A. One reason why I remember it distinctly is that a little after this Mr. Thomas was taken sick and called away, that he had to go away for his health and for a time I had charge of the store, as Mr. Whitley was not there all the time.

XQ58. You have said that Wilkins spent half a day going over his entire line with Whitley. How do you happen to remember for nearly six years what was said about Quin-Coco which was only one of a large line?

By Mr. Bradford: Objection repeated.

A. Well, I remember one point about it was that they bought the Quin-Coco and we had it there and the first bottle we got did not give absolute satisfaction and I heard Mr. Whitley say something about it that we wanted to take it up with the house and get credit for this bottle or have it replaced with a new bottle.

XQ59. Can you give any other reason why you remember for nearly six years what was said about Quin-Coco out of a large line and in a conversation lasting half a day?

By Mr. Bradford: Same objection.

A. Well I can't give any more reason for that than for remembering other things that happened along the same time. I was working in the store pretty close and giving naturally interest to it and kept up with everything as far as I could.

XQ60. After Whitley said that the first bottle did not give satisfaction did he buy any more Quin-Coco?

Same objection.

A. I don't know, sir, whether he bought any more or not. I think probably he did but as I went away to school I would not be in a position to say positively.

XQ61. When was the interview with Gonzales?

A. Last year, about the latter part of 1915.

XQ62. Did you buy any from—any Quin-Coco from him?

A. Yes, sir.

XQ63. Was that your first interview with him?

A. No, sir; I had seen Mr. Gonzales before, had dealings with him before, I began dealing with him the latter part of 1914 or early part of 1915.

XQ64. When did he first offer you Quin-Coco?

A. In the latter part of 1915.

XQ65. When a particular drug is called for and you have not got it, but you have another drug which you consider just like it, therapeutically, do you fill the order with the latter drug?

By Mr. Bradford: Objected to as not cross-examination as incompetent, irrelevant and immaterial.

A. I have done so in the case of Coco-Quinine by using Quin-Coco, having been assured by the salesman that Quin-Coco is the same preparation and sold and used as Coco-Quinine. At this time when Mr. Gonzales told me this he told me that I could not get Lilly's Coco-Quinine in gallon bottles but that his house was still supplying it in gallon sizes. Due to the drug con-

ditions at that time he encouraged me to buy his preparation.

By Mr. Rawle: The answer is objected to as entirely unresponsive.

XQ66. XQ65 repeated.

By Mr. Bradford: Objection repeated.

A. I have done so when the therapeutical action and the physical effect were the same.

XQ67. Is it a common practice?

Same objection.

A. No, sir.

Deposition closed at 12.15.

By Mr. Rawle: Notice is given of motion to strike out this deposition.

Elzie H. White.

William G. Walker, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford (at 12.15):

Q1. Please state your name, age, residence and occupation?

A. William G. Walker, age 31; Winfield, La.; bookkeeper for the Winfield Drug Company. I am not a registered pharmacist. I do clerking in the store and sell general line items but do not have anything to do with the prescription work.

Q2. Please state how long you have been connected with the retail drug business and where?

A. I was employed in the Dodson Drug Store at Dodson, La., from about April, 1910, to about May 1912, as bookkeeper, assistant pharmacist and general store work. This store was owned by Whitley and Thomas and run as a branch of their Winfield store.

After May, 1912, I went to school for a while then went into a general merchandise store and then went back to work for Whitley at Winfield Drug Store April 1st, 1916, as bookkeeper and clerk.

Q3. Do you know a man by the name of John F. Wilkins and if so who is he and what is his business?

A. Yes, sir. When I knew him about 1911 he was with the Pfeiffer Chemical Company as a traveling salesman selling their general line. I did not know at that time whether it was called Wm. R. Warner & Co. or not. I know it is now.

Q4. Did Mr. Wilkins ever solicit business or orders for his goods at the Dodson Drug Store while you were there, and did you have anything to do with the buying?

A. Yes, sir; and I did the principal part of the buying for prescription department.

Q5. Did Mr. Wilkins ever solicit your order for a preparation called Quin-Coco, and if he did, what did he say to you respecting this item?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject having been fully gone into in plaintiff's prima facie case.

A. He did. He asked us if we had any of this preparation on hand. We told him we did and he was telling us about the large sales that he had all over the country. He said that it was much cheaper than Coco-Quinine, as you could buy about a gallon for what five pints of Coco-Quinine would cost, and that it could be dispensed on a doctor's prescription when Coco-Quinine was specified and was being dispensed all over the country.

Q6. In this way?

A. Yes, in this way, as Coco-Quinine, and was being dispensed all over the country.

Q7. What do you refer to by the words "This preparation" in the first part of your answer to Q5?

A. Quin-Coco.

Q8. I infer then that you already had Quin-Coco in the store when Mr. Wilkins called on you?

A. We did.

Q9. From whom had this been purchased?

A. From Mr. Wilkins.

Q10. Was this purchased from him by you?

Same objection.

A. No.

Q11. So far as you know were there any calls at your store for Quin-Coco or prescriptions written for Quin-Coco?

A. No, not that I ever saw or knew of.

Q12. How were the perscriptions for this preparation that came to this store written?

Same objection.

A. Coco-Quinine.

Q13. By what name was it called for by the laity?

Same objection.

A. Coco-Quinine and very seldom chocolate quinine.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 12.40 without waiving objections):

XQ14. Was this interview with Wilkins at a store with which John F. Whitley was connected?

A. Yes, sir.

XQ15. Was Elzie H. White in the employ of that Whitley Drug Store at the time of the Wilkins interview?

By Mr. Bradford: Objected to as immaterial, incompetent and irrelevant and not cross-examination.

A. Not that store, the Dodson store. He was connected with the Winfield Whitley Drug Store at that time.

XQ16. When was it that Wilkins solicited the order for Quin-Coco as you have testified?

A. About April, 1911.

XQ17. Who was present?

A. Dr. Pankey and Mr. Whitley.

XQ18. Who did the buying, you or Whitney?

A. I did the buying for the prescription department of this store.

XQ19. How long did the interview last?

A. I could not state, only a few minutes, as to Quin-Coco with me.

XQ20. Did he go over his line with you at that interview?

A. He did not, with me, as I only did the buying for the prescription department. He only went over the pharmaceutical part of it, with me.

XQ21. Had he a good many items in the pharmaceutical part of it that he was offering you?

A. I don't remember whether he mentioned any other item in this department, except Quin-Coco.

XQ22. Did you buy any Quin-Coco from him?

A. No, sir; we already had a good stock on hand.

XQ23. Did you tell him you had?

A. We did.

XQ24. If you told him you had why did he go into an argument to persuade you to buy still more when you did not need any?

By Mr. Bradford: Objected to as irrelevant and immaterial and also as incompetent.

A. I suppose he wanted to impress it on us the uses of Quin-Coco so that when we needed something in this line we would order Quin-Coco from him.

XQ25. Previous to that time were you carrying Coco-Quinine in stock regularly?

A. We had carried it in stock regularly before that.

XQ26. When prescriptions had been written for Coco-Quinine had you been filling them with Quin-Coco?

A. Yes, sir.

XQ27. How often since that interview in 1911 have you been solicited by Wilkins to buy his line?

A. I don't know as I have seen Mr. Wilkins since that time.

XQ28. With what representative of the Lilly Company have you talked to about this case and who asked you to come here?

A. Mr. Mouton talked to me about it and Mr. Whitley asked me to come. Mr. Mouton is the Lilly salesman who succeeded Mr. Broussard, who is dead.

XQ29. Have you seen Mr. R. L. Winchester since you have been here?

A. I don't know his initials. I met a Mr. Winchester a few minutes ago.

XQ30. Is he a Lilly man?

A. Mr. Whitley told me he was when I was introduced to him.

XQ31. Where and when did he tell you that?

A. In Mr. Bradford's room in this hotel, today.

XQ32. You mean John F. Whitley, do you?

A. Yes, sir.

By Mr. Bradford: It is noted by counsel for plaintiff that at the conclusion of the deposition by Mr. White, he went to his room to advise the present witness to come in for examination and found Mr. Winchester in the room talking with Mr. John F. Whitley and the witness. As to how long Mr. Winchester had been in the room he is unable to state. He objects, however, to all questions along this line as wholly incompetent, irrelevant and immaterial.

XQ33. What is the population of Dodson, La., and how many drug stores were there, I mean, in 1911?

Same objection.

A. The population was about 250; one drug store. Winfield is about 300 miles from Memphis.

XQ34. Can't you remember how many items in his line Wilkins offered you that day in 1911, approximately?

Objection repeated.

A. I don't remember anything except Quin-Coco.

XQ35. Do you mean that you don't remember whether he did or did not offer you any other thing or merely that you don't remember the names of what he did offer you?

Objection repeated.

A. Nothing was offered that I remember except Quin-Coco.

By Mr. Rawle: An objection is here made to all the questions asked this witness in chief which by stipulation is to stand as if made to each question, at the time it was asked, the objection being that the questions are not proper for rebuttal.

Notice of a motion to strike out the deposition for the same reason is given.

Cross-examination closed at 1.20.

Re-direct-examination.

By Mr. Bradford:

RDQ36. How long approximately did Mr. Wilkins talk with Mr. Whitley and Dr. Pankey at the time of the interview you have testified about?

A. He was there between trains, two or three hours in the town, spending practically all his time in the drug store, as there was only one drug store in town.

Deposition closed.

W. G. Walker.

WILLIAM C. DIRMEYER, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to questions propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. William C. Dirmeyer, of legal age, Memphis, Tenn.; retail druggist. I have been in the retail drug business for twenty years.

Q2. Do you know a gentleman by the name of Alva Lee Kelton, and if so, how long have you known him and in what capacity have you known?

A. I have known him as a traveling salesman since anywhere from 1896—I met him between 1896 and 1898—I have known him up to the present time. He was a traveling salesman for the Pfeiffer Chemical Company and afterwards Wm. R. Warner & Co.

Q3. What is Mr. Kelton's reputation as a business man?

By MR. RAWLE: Objected to as inadmissible and incompetent and irrelevant.

A. His reputation has been good so far as his dealings with me are concerned. He never has misrepresented anything to me.

Q4. Were your dealings with him quite extensive covering a period of many years?

A. My dealings from 1909 until he quit the Pfeiffer Chemical Company was quite extensive. Prior to that I didn't buy as many goods from him.

Q5. Do you regard him as a man whose word is entitled to belief?

By MR. RAWLE: Same objection.

A. I do.

Direct-examination closed.

No cross-examination.

Deposition closed.

WM. C. DIRMEYER.

SOLOMON R. HAMILTON, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to questions propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Solomon R. Hamilton, age 34, Memphis, Tenn.; retail druggist. I have been in the retail drug business for myself a little over three years and prior to that time I worked in the drug business as manager for Mr. Bond, who had two drug stores, one at Lamar and Vesey streets, and the other at Wellington and Walker streets, in Memphis. I was with him about three years. I have been a clerk in other stores here in Memphis for about three years prior to the time I became manager for Mr. Bond, and also several years in Arkansas before coming to Memphis.

Q2. Do you know Mr. Alva Lee Kelton, and if so, how long have you known him?

A. I have known Mr. Kelton since 1907, anyway at least that long.

Q3. Did he call on you as a drug salesman representing the Pfeiffer Chemical Company and the Wm. R. Warner Co.?

A. I think at that time it was just the Pfeiffer Chemical Company; I don't know whether Warner was connected with it or not.

Q4. Up to about what period did he call on you as a drug salesman?

A. I should say until 1911 or '12.

Q5. Did you have considerable number of deals with him?

A. Yes, sir.

Q6. Know him pretty well personally?

A. I felt that I knew him fairly well.

Q7. What was his reputation as a man and as a salesman?

By MR. RAWLE: Objected to as incompetent,

irrelevant and inadmissible. And the same objection by consent is to stand to each question on this line.

A. He was considered a good salesman and a nice gentleman.

Q8. Do you regard him as a man whose word is entitled to be believed?

A. I do, yes, sir.

Q9. Would you believe him personally if he made a statement of fact to you?

A. Yes, sir.

Direct-examination closed.

By Mr. Rawle: Objection is made to the whole deposition for the same reasons and notice is given of motion to strike it out.

Deposition closed.

Sol. R. Hamilton.

Adjourned to meet at St. Charles Hotel, New Orleans, La., Monday, August 14th, 1916, at 9.30 A. M.

New Orleans, La.,
St. Charles Hotel,
August 14th, 1916, 9.30 A. M.

Met pursuant to adjournment.

Parties present as before.

John W. Culver, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. John W. Culver, age 31, Gulfport, Miss.; am

now a traveling salesman for the Parker-Blake Company, Ltd., New Orleans, La., wholesale druggists of New Orleans. I was formerly in the retail drug business in Gulfport, Miss., for approximately eight years, from January, 1908, until November, 1915. Our store was known as the Parlor Drug Store. I began work for my present employers the first of January, 1916.

Q2. Do you know a man by the name of B. F. Jones, and if so who is he, what is his business and how long have you known him?

A. I know Mr. B. F. Jones very well. He is a traveling representative for Wm. R. Warner & Co., and the Pfeiffer Chemical Company and their allied concerns in Southern Mississippi, and called on me in that capacity for quite a long while. I have known him since the early part of 1908.

Q3. Did Mr. Jones ever solicit your order for goods manufactured by Wm. R. Warner & Co., and among other items did he ever solicit your order for a preparation called Quin-Coco?

A. Yes, sir; he did; both for their general line items and including Quin-Coco.

Q4. What did Mr. Jones say to you respecting the item Quin-Coco when soliciting your order for the same?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject having been fully gone into on the prima facie case.

A. He said it was absolutely identical with Coco-Quinine and could be used in its stead and solicited the business on it on the strength of the difference in price between the Quin-Coco and the Coco-Quinine.

Q5. Mr. Jones testified in this case as a witness for defendant and among other things stated (XQ96, page 219, Def. Rec.) that he never compared Quin-Coco with Coco-Quinine when making sales. What have you to say as to this?

By Mr. Rawle: Objected to as not proper for rebuttal and as immaterial.

A. It is absolutely untrue as to my own experience with him.

Q6. He also said (XQ97) that he never called it Quin-Coco, that he called it "chocolate quinine." What have you to say as to this based upon your experience with him?

Same objections.

A. I never heard him call it anything but Quin-Coco. I never heard him refer to it as "chocolate quinine," or in any other way except as "Quin-Coco."

Q7. During the period covering the several years that Mr. Jones called on you and solicited your trade, did he ever offer you Quin-Coco to be sold in the original packages put up in two ounce and four ounce bottles?

By Mr. Rawle: Objected to as not rebuttal and as immaterial and irrelevant.

A. No, sir; he did not. I was not aware that it was put up in such package at all.

Q8. Did Mr. Jones say anything to you as to how you could dispense the preparation Quin-Coco and if so what did he say?

By Mr. Rawle: Objected to as not proper for rebuttal, as leading, and because the witness (Q4) has already been asked to state what Mr. Jones said respecting the item Quin-Coco and has answered the question.

A. He sold it to be dispensed in place of Coco-Quinine on the representation that neither the doctor nor anyone else could tell the difference between that and Coco-Quinine. They guaranteed it was absolutely the same thing.

Q9. On what kind of calls and on what kind of prescriptions?

By Mr. Rawle: Objected to as not rebuttal, and because the witness has already testified in answer to Q4.

A. Primarily on physicians' prescriptions for Coco-Quinine, and also on any general counter calls for Coco-Quinine.

Q10. Mr. Jones stated as a witness for defendant in answer to XQ94, that he never told a man that he could substitute. What have you to say as to this based upon your experience with Mr. Jones?

By Mr. Rawle: Objected to as not proper for rebuttal, because the witness has already been interrogated as what Mr. Jones said (Q4) and because the question does not relate to any particular interview but to the witness's general experience with Mr. Jones, which is not relevant nor admissible.

A. His testimony is absolutely at variance with my experience with Mr. Jones.

Q11. When did the interview occur at which Mr. Jones offered you Quin-Coco concerning which you have testified?

A. My recollection is that it was in the early part of 1908. We had frequent conversations in regard to the matter of Coco-Quinine and Quin-Coco; also, in subsequent years. This being one of his main items and an item on which he boasted of the volume of his business.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 9.50 without waiver of objections):

XQ12. Did you carry Quin-Coco in stock during those eight years?

A. The greater part of it, yes, sir.

XQ13. And when your stock of Quin-Coco was out or was low, did he solicit you to buy more and did you buy more usually.

A. As a rule, yes. He sold on the basis of its

being underpriced, just as he sold the majority of the rest of his pharmaceuticals as that was about the only way he could get business on that line of merchandise.

By Mr. Rawle: All of the answer except the first clause is objected to as volunteered and irrelevant.

XQ14. Then you were a willing purchaser, were you not, of Quin-Coco?

A. To the extent that I accepted his guarantee on behalf of his company for the product being identical with Coco-Quinine and therefore subject to use in place of Coco-Quinine on that account.

XQ15. XQ14 repeated.

By Mr. Bradford: The repetition of the question is objected to on the ground that the witness' last answer is fully responsive.

A. I think my previous answer is sufficient.

XQ16. Each time he solicited your trade on Quin-Coco did he have trouble in persuading you to buy it?

A. No; he had no great difficulty, but the matter was discussed almost every time he solicited business from us.

XQ17. How many calls did he make on you, approximately, in those eight years?

A. Probably not less than thirty-two calls, possibly more.

XQ18. How large a place is Gulfport, and how many drug stores are there?

A. Gulfport has a population of approximately eight thousand people, and there were at that time three drug stores in the town.

XQ19. How many doctors?

A. Probably fifteen or sixteen doctors.

XQ20. Was yours the largest drug store there?

A. The greater part of the time referred to our store had the largest volume of business of any drug store in the town.

XQ21. When you left it did it go out of business? Or has it since?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. It is in operation under different management.

XQ22. When you get a prescription or a call over the counter for a specified preparation and without saying anything about it, you fill it with a similar preparation, therapeutically, do you consider that honest practice in a drug store?

A. I consider it bad practice from a commercial as well as a moral standpoint.

XQ23. What I want to know is whether, in your opinion, it is honest practice for a druggist, on a prescription or call for one drug, to fill the order with a similar drug, without telling the physician or the customer?

A. At that time I considered the guarantee of the manufacturers through their representatives made this a defensible act on my part, to fill or have these prescriptions for Coco-Quinine filled with Quin-Coco, which on the manufacturers' representations was absolutely identical with and could not be detected from Coco-Quinine. As to my present views in the matter, I do not approve of it, and the last year or the greater part thereof that I was in the retail drug business I discontinued handling Quin-Coco, as the only use I had for it was in substitution for Coco-Quinine.

XQ24. Are Coco-Quinine and Quin-Coco the only two preparations that you have had in stock at Gulfport, during these years which were similar to each other therapeutically?

By Mr. Bradford: Objected to as immaterial and irrelevant and as not cross-examination.

A. I had at one time a gallon of Mulford's Chocolate Quinine.

XQ25. When you are going to your shelves to fill

a prescription has it not often been the case that there were two preparations made by different houses, but therapeutically similar, either of which therapeutically would meet the prescription? I am not referring now to chocolate quinine mixtures, but to your whole stock?

By Mr. Bradford: Objection repeated.

A. Yes; there were other preparations of standard formula similar to preparations made by other manufacturers, but in the case of a proprietary or a trade-mark article being called for by a physician it was not our custom to use one product where another was indicated, except in the case of using Quin-Coco to replace Coco-Quinine.

XQ26. Did not Jones say to you in substance that the two preparations were similar and that his was cheaper?

A. No, sir; he said they were identical, and that his was cheaper; that it was the same thing as Coco-Quinine.

XQ27. And was that the substance of what he said on this subject?

A. The word "identical" and the words "the same as" were the words he used in connection with the comparison of Quin-Coco with Coco-Quinine, and he never used the words "similar to" in his discussion of the matter with me.

XQ28. Then I ask you whether Jones did not say to you, in substance, that the two preparations were identical or that his was the same as Coco-Quinine, but that his was cheaper, and I ask you whether that was not the substance of what he said to you?

By Mr. Bradford: Objected to as improper, witness having fully answered both on direct and on cross-examination as to the matter inquired about.

A. The substance of Jones' remarks to me in regard to this matter as stated in my previous answers

were that the two preparations were identical and that Quin-Coco could be used in place of Coco-Quinine, and that it was to our advantage to use it, inasmuch as the price was much lower than Coco-Quinine.

XQ29. Did you buy more or less of Jones' line at different times; that is, were you a thoroughly good customer?

A. I was so considered by the house, judging from one or two of their letters thanking me for my patronage.

XQ30. Did you consider Jones a square salesman?

A. He was very fair to his customers. He was unfair to his competitors.

XQ31. Is that what you thought of him then or what you think of him now by retrospection, you being now yourself a wholesale drug salesman?

A. It was my original opinion of him, and I have not so far had occasion to change that opinion.

XQ32. Were you at your Gulfport store on the 8th of April, 1915?

A. So far as I know, I was. I have no reason to specifically have that date in mind.

XQ33. How far is it from Gulfport to Mobile?

A. Approximately seventy miles, from Gulfport to Mobile.

XQ34. With what Lilly salesman have you talked as to this case, and when?

A. My first knowledge of this matter came from an incidental remark made by Mr. Bynum, the manager of the local branch of Eli Lilly & Co., at New Orleans, La., and hinged upon a remark made by Mr. Jones in his testimony before this court according to Mr. Bynum's remark to me, setting forth the facts that Mr. Jones claimed he had never recommended Quin-Coco as a substitute for Coco-Quinine, and that if all of the retail druggists in his territory claimed to the contrary he would still maintain that his statement was correct and theirs false. I thereupon told Mr. Bynum

that I would be extremely pleased to offer my services to Eli Lilly Company whenever they chose to make use of it to contradict Mr. Jones' statement, in so far as I myself was concerned. Since that time I have possibly mentioned the matter to Mr. Tisdale, representing Eli Lilly & Co., in the Mobile territory, and further than that do not recall any conversations with any Lilly salesmen except Mr. Bynum, the manager of the New Orleans branch. My first interview with Mr. Bynum on this subject was in New Orleans in his office probably three or four months ago. My interview with Tisdale was subsequent thereto and consisted of casual mention, if any, probably in the city of Biloxi, Miss. I have had no discussion of any consequence other that I recall.

XQ35. What is the last date of interview with Jones at which you distinctly remember and can see in your mind's eye that he stated to you the identity of Coco-Quinine with Quin-Coco and its cheaper price?

By Mr. Bradford: Objected to as immaterial and irrelevant and as an unfair prolongation of the cross-examination, especially as counsel for defendant has been advised that this witness has an important business engagement, which required him to leave here before this hour.

A. The definite date, of course, is not in my mind, but probably about two years ago.

XQ36. Do you understand the difference between giving Jones' statements to you in his exact words in the direct narration and giving them as you have given them in indirect narration, by merely stating the substance of what he said?

By Mr. Bradford: Objected to as irrelevant and immaterial.

A. I would not attempt to quote Jones verbatim at length. But the gist of his remarks and the use of the word "identical" and "substitution" in connection

with the Coco-Quinine and Quin-Coco are indelibly impressed in my mind, and I have no hesitancy whatever in such testimony and such use of those words purported to have come from him in conversation with me as have preceded this question and answer.

XQ37. Give verbatim any of his words as used to you in respect of substitution, quoting him just as the words came from his mouth?

By Mr. Bradford: Objection repeated.

A. I think my previous testimony in this matter is explicit and sets forth the terms which he habitually used in connection with it.

XQ38. I want you to give his words or any of them that you remember, or else to say that you do not remember his exact words or any of them?

By Mr. Bradford: Objected to as improper, immaterial and irrelevant.

A. Jones frequently said that "Our Quin-Coco is identical with Lilly's Coco-Quinine and is cheaper." Or, "you can use for substitute Quin-Coco for Coco-Quinine, as it is identical, and a doctor could not tell the difference."

XQ39. Approximately how often did he say this to you during those thirty-two visits?

A. Whenever the matter was discussed.

XQ40. As many as sixteen times?

A. Fully.

XQ41. As many as twenty times.

A. I think my previous answers are all that are necessary in this connection.

XQ42. As a wholesale drug salesman are you in competition now with Jones or the Warner line?

A. To a very limited extent.

Deposition closed at 10.55.

J. W. Culver.

JOHN R. STUCKEY, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD (at 11 A. M.):

Q1. Please state your name, age, residence and occupation?

A. John R. Stuckey; age 34; Samson, Ala.; retail druggist. I have been in business in Samson two years, the name of my store being the Samson Drug Company. Prior to coming to Samson I was manager of the Peoples Pharmacy of Brantley, Ala., for four years and eight months. I began as a clerk with the West Brother Drug Company, retail druggists, at Montgomery, Ala., in 1905.

Q2. Do you know a gentleman by the name of Clinton G. McCarthy, and if so, who is he and how long have you known him?

A. Yes, sir; I have known him for about four or five years. He was a traveling salesman for Wm. R. Warner & Co., and I knew him as such.

Q3. Has McCarthy, while representing Wm. R. Warner & Co., solicited your orders for their products?

A. Yes, sir.

Q4. Where?

A. At Brantley, Ala.

Q5. When?

A. Between three and four years ago.

Q6. Among other products did he solicit an order for a preparation called Quin-Coco?

A. Yes, sir, he did.

Q7. What did Mr. McCarthy say to you respecting this preparation when soliciting your order for it?

By MR. RAWLE: Objected to as not proper for rebuttal, the subject forming part of plaintiff's prima facie case, and having been fully gone into in that part of the case.

A. He asked me if I used very much Coco-Quinine. I told him I did. He told me he had a preparation called Quin-Coco, which was the very same thing, and he could save me some money on it.

Q8. Did he tell you how you could dispense it, and if he did what did he say about this?

Same objection.

A. He said I could put it up and people would not know the difference between his and Lilly's.

Q9. Did he tell you on what calls you could dispense it and if so on what kind of calls?

Same objection, and as leading and the witness having already been interrogated thereto.

A. He told me I could put it up on prescriptions, that I would not be doing anything wrong, as it was the very same thing as Coco-Quinine.

Q10. On prescriptions for what?

Same objection.

A. Coco-Quinine.

Q11. Did he say anything about calls over the counter?

Same objection.

A. Yes, sir; he told me I could put it up and label it Coco-Quinine; that I could sell it under the label of Coco-Quinine.

Q12. Mr. McCarthy was called as a witness for defendant in this case, and in his testimony (Q45) he stated that in his sales talk to customers he never mentioned a competitor's name? How does this statement accord with your experience with Mr. McCarthy?

By Mr. Rawle: Objected to as not rebuttal.

A. Why, he certainly did call the name of Eli Lilly & Co. and Coco-Quinine.

Q13. He also stated (Q44) that in introducing this subject of Quin Coco to a druggist he did so by saying,

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"Mr. Druggist, how is your chocolate quinine to-day." How does this statement accord with your experience with Mr. McCarthy?

Same objection.

A. He always asked me how was my stock of Coco-Quinine.

Q14. Mr. McCarthy also stated (XQ205) that he never made any suggestions or intimation that any of the Warner products could be used as replacers or substitutes for well known products of other houses. How does this statement accord with your experience with Mr. McCarthy?

By Mr. Rawle: Same objections.

A. He told me Quin-Coco could be used instead of Coco-Quinine.

Q15. Did you buy Quin-Coco?

Same objection.

A. I bought one gallon.

Same objection.

Q16. Was it satisfactory?

Same objection.

A. No, sir; it was not.

Q16. Did you use it?

Same objection.

A. Used part of it.

Q17. Why did you not use the rest?

Same objection; also as irrelevant.

A. Because they told me it was not Coco-Quinine and I could not use it.

Q18. Whom do you mean by "they"?

Same objections.

A. The doctors prescribing it.

Q19. Prescribing what?

Same objection.

A. Coco-Quinine.

Direct-examintaion closed at 11.20.

Cross-examination.

By Mr. Rawle (at 11.30, without waiver of objections):

XQ20. What he said to you is substantially that Quin-Coco was the very same thing as Coco-Quinine and he could save you some money on it, is that correct?

A. Yes, sir.

XQ21. How often did he talk about it to you?

A. Every time he came around.

XQ22. That would be about four times a year for four or five years?

A. He came around every sixty or ninety days, I don't remember which, for three or four years.

XQ23. And every time he called he said about the same things to you in regard to Quin-Coco?

A. He always mentioned Coco-Quinine.

XQ24. And what he said about it was substantially the same every time?

A. About the same thing every time.

XQ25. When was the last time you talked with him about Quin-Coco?

A. I don't remember; it has been about two years ago.

XQ26. Can you give verbatim the words he used in regard to Quin-Coco, quoting them as he said them, and in direct form?

By Mr. Bradford: Objected to as immaterial.

A. About the same thing every time, "How is your stock of Coco-Quinine," and wanted to sell me some Quin-Coco.

XQ27. How did he say it to you? In what words?

A. He said Quin-Coco was the same thing as Coco-Quinine, and I could save money on it, about the same thing every time he talked about it.

XQ28. What were the words that he used? Have you given them all in answer to my questions?

Objected to as immaterial.

A. I think I have.

XQ29. How far from New Orleans is Samson, Ala.?

A. About 442 miles, via Montgomery, Ala.

XQ30. What is the population, and how many drug stores and doctors are there there?

A. About 2200; four drug stores; eight doctors.

XQ31. Were you a fairly good customer of Wm. R. Warner & Co.?

A. Yes, sir.

XQ32. Did you always find McCarthy a square salesman?

A. Yes, sir.

XQ33. You did not think he was dishonest, did you, or unethical?

A. I believe he was the way he did about the Quin-Coco.

XQ34. Was he about any other of the items of his line?

A. No, sir.

XQ35. Were not a great many of them in direct competition with the lines of other drug houses who solicited your trade, or whose preparations you carried in stock?

A. Yes, sir.

XQ36. If you thought he was unethical in the way he talked about Quin-Coco, why did you not let him understand that you did not like that sort of talk, as an honest druggist?

By Mr. Bradford: Objected to as irrelevant and immaterial.

A. I thought he was an honest man and thought he knew what he was talking about.

XQ37. So you did not show him that you resented anything he said about Quin-Coco?

Objection repeated.

A. I did not buy any Quin-Coco the first time, but I did after that. It was always the first thing he wanted to sell me, he said it was the same thing as Coco-Quinine.

XQ38. What Lilly man first talked to you about this case?

A. Mr. C. E. Bateman, the Lilly salesman in Southeast Alabama.

XQ39. When?

A. A short time ago.

XQ40. Only once?

A. Only one time.

XQ41. Do you not carry a good many drugs on your shelves in duplicate; that is, similar drugs therapeutically, but made by different houses?

By Mr. Bradford: Objected to as not cross-examination, incompetent and irrelevant.

A. Yes, sir.

XQ42. About how many? Fifty?

Same objection.

A. No, sir.

XQ43. Twenty?

Same objection.

A. No, I have not.

XQ44. If one such drug is called for on a prescription, which prescription does not name the maker, what would you do?

Objection repeated.

A. If I did not have what he called for I would go out and get it.

XQ45. XQ44 repeated.

Objection repeated.

A. I would go out and get it, if he specified any certain maker, and I did not have it.

XQ46. Have you sometimes filled a prescription with a preparation of a different house from the one specified in the prescription?

Objection repeated.

A. One time.

Deposition closed at 12 M.

By Mr. Rawle: Notice of motion to strike out this deposition is here given.

Jno. R. Stuckey.

Recess until 1.30 P. M.

Counsel for plaintiff advises counsel for defendant that one of the witnesses whom he expected to examine here is unable to come from Mobile, Ala., on account of illness in his family, and that in order to get his deposition it will be necessary to adjourn this afternoon in time to take the train leaving at 5.15 for Mobile, Ala., where the witness is believed to be ready for examination on arrival of the train.

After recess.

Alva Lee Kelton, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Are you the same Alva Lee Kelton who has heretofore testified on behalf of plaintiff in this cause?

A. I am.

Q2. A witness for defendant herein, Mr. Harry E. James, by name, testified respecting the amount of the product Quin-Coco sold by Wm. R. Warner & Co., both at its Philadelphia and St. Louis plants, per annum. By his testimony it would appear that the total sales of this preparation for the year 1914 were less than $13,000, and for the year 1915, less than $15,000, and while he could not state the figures for the years 1908, 1909, 1910, 1911, 1912 and 1913, the presumption from his testimony would seem to be that the sales for those years were less than for the years 1914 and 1915. He stated in answer to questions by counsel for defendant that the average sales of Quin-Coco per day per salesman for 1914 was fifty cents; the average sales per day per salesman for 1916 were sixty cents; the average sales per salesman for the year 1914 was about $160; the average sales per salesman for the year 1915 was about $185.

As a salesman who formerly worked for the Warner Company and who sold Quin-Coco among other items in defendant's lines, as appears from your former testimony in this case, I ask you to state how these figures given by Mr. James compare with the actual results of your work?

By Mr. Rawle: Objected to because the witness has not qualified to speak as to the total sales of the defendant. And because the question as to the average sales per day per salesman is mere computation, and because the question as far as it inquires as to the sales by the witness of Quin-Coco is not relevant to the issue or admissible.

A. My individual experience in the sale of the article mentioned, Quin-Coco, the record made by Mr. James would have no bearing whatever upon my sales of Quin-Coco, for they so further exceeded that amount that it is ridiculous to make the comparison.

Q3. Have you been able from any actual records

to form an approximate estimate of what your sales of this particular product amounted to per year, both in gallons and in sales price, beginning with the year 1907, down to the time your services with the company terminated?

By Mr. Rawle: Objected to because the amount or value sold by the witness is not a relevant fact, and because the question is not proper for rebuttal, and because the witness has already been examined and should then have been interrogated as touching this subject.

A. I have. In looking over duplicate orders which I found in my possession I made a compilation of the amount of Quin-Coco sold each year, beginning with 1907 to 1912, inclusive. I will state, however, as is always the case with old papers, many orders were not found; also many copies of mail orders, duplicates of which I always received.

Q4. I ask if by my request you have made up a list of the duplicate orders in your possession giving the number and date of the order, the total amount of the order, the amount of Quin-Coco, both in quantity and price, on each order, for each of the several years referred to, and if you have if you will produce this list?

By Mr. Rawle: Same objections; also because the witness can not be permitted to produce typewritten lists copied from his duplicate orders, except after production of the duplicate orders and their inspection by opposing counsel, and subject to cross-examination thereon.

By Mr. Bradford: It is understood that the originals of each of these orders identified by its number is in the possession of defendant, and counsel for defendant is notified here that no objection will be made by plaintiff at any time prior to the trial of this cause to the introduction or production of the original orders by defendant to

prove that any statement by this witness based upon these lists is inaccurate.

By Mr. Rawle: Nothing is "understood" in this respect by defendant's counsel. The objections are repeated, and the production by the witness of any original duplicate orders from which he has made any list produced by him is insisted upon as a prerequisite to the offer of any copied list.

A. I have and here produce the list, being a list contained in a book from all the orders I could find in my possession for the years mentioned, namely, 1907 to 1912, inclusive, this being the time in which I sold the article, Quin-Coco.

Q5. I ask you to read into the record the orders as recorded in this list, arranged in chronological order, beginning with the first order down to the last?

By Mr. Rawle: The objections are repeated.

A. The witness reads as follows:

For 1907.

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
36	Jan. 23rd	$26.67	$1.20	2 pints
82	June 25th	15.25	3.75	1 gallon
84	June 28th	30.40	2.50	5 pints
123	March 14th	33.25	2.50	5 pints
139	March 20th	66.97	.60	1 pint
184	April 11th	22.60	2.50	5 pints
193	April 15th	25.95	2.50	5 pints
376	August 1st	7.50	1.20	2 pints
379	August 2nd	27.70	7.00	2 gallons
387	August 5th	25.89	2.50	5 pints
505	Sept. 27th	51.08	3.75	1 gallon
567	Oct. 28th	59.75	.60	1 pint
580	Nov. 1st	18.30	1.20	2 pints
603	Nov. 1st	15.45	2.50	5 pints
655	Dec. 3rd	35.20	1.20	2 pints
678	Dec. 12th	32.	2.50	5 pints
687	Dec. 19th	52.32	1.20	2 pints
17			39.15	10 gallons

For 1908

11	Jan. 6th	$19.75	$3.75	1 gallon
48	Jan. 21st	25.05	2.50	5 pints
73	Feb. 4th	12.66	.60	1 pint
75	Feb. 4th	16.25	2.50	5 pints
91	Feb. 13th	11.34	.60	1 pint
113	Feb. 19th	47.25	2.50	5 pints
214	March 30th	43.91	1.20	2 pints
218	April 2nd	15.60	2.50	5 pints
244	April 13th	27.85	2.50	5 pints
248	April 14th	56.05	2.50	5 pints
254	April 15th	37.49	3.75	1 gallon
256	April 16th	22.55	1.20	2 pints
258	April 17th	24.45	2.50	5 pints
263	April 17th	19.32	2.50	5 pints
264	April 17th	345.92	3.75	1 gallon
266	April 20th	21.	3.75	1 gallon
268	April 20th	27.80	3.75	1 gallon

Orders.

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
420	July 11th	36.46	3.75	1 gallon
423	July 13th	32.25	3.75	1 gallon
424	July 13th	9.75	3.75	1 gallon
429	July 14th	18.65	3.75	1 gallon
443	Aug. 5th	36.42	2.50	5 pints
446	Aug. 6th	21.07	2.50	5 pints
461	Aug. 13th	24.10	2.50	5 pints
472	Aug. 18th	32.65	2.50	5 pints
478	Aug. 20th	39.35	2.50	5 pints
479	Aug. 20th	32.85	2.50	5 pints
480	Aug. 21st	16.43	.60	1 pint
481	Aug. 21st	31.61	2.50	5 pints
482	Aug. 21st	16.96	3.75	1 gallon
485	Aug. 25th	11.25	3.75	1 gallon
486	Aug. 25th	61.80	3.75	1 gallon
489	Aug. 26th	7.50	2.50	5 pints
496	Aug. 28th	45.96	3.75	1 gallon
500	Aug. 29th	44.27	1.20	2 pints
504	Aug. 31st	34.30	3.75	1 gallon
505	Aug. 31st	52.40	2.50	5 pints
508	Sept. 2nd	60.85	3.75	1 gallon
509	Sept. 3rd	17.25	2.50	5 pints
510	Sept. 3rd	31.75	3.75	1 gallon
511	Sept. 4th	29.99	3.75	1 gallon
513	Sept. 4th	22.20	3.75	1 gallon
514	Sept. 5th	51.28	3.75	1 gallon
517	Sept. 7th	30.51	3.75	1 gallon
521	Sept. 9th	15.90	3.75	1 gallon
523	Sept. 9th	25.89	7.	2 gallons
525	Sept. 11th	32.90	3.75	1 gallon
529	Sept. 11th	26.15	3.75	1 gallon
530	Sept. 12th	21.35	2.50	5 pints
531	Sept. 12th	42.03	2.50	5 pints
537	Sept. 16th	56.65	3.75	1 gallon
538	Sept. 16th	3.75	3.75	1 gallon
539	Sept. 16th	18.	3.75	1 gallon
542	Sept. 17th	34.45	3.75	1 gallon
545	Sept. 17th	16.50	3.75	1 gallon
547	Sept. 18th	30.22	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
548	Sept. 21st	8.10	3.75	1 gallon
549	Sept. 21st	29.55	3.75	1 gallon
553	Sept. 22nd	31.96	.60	1 pint
558	Sept. 23rd	8.56	2.50	5 pints
560	Sept. 25th	21.80	2.50	5 pints
562	Sept. 28th	74.95	2.50	5 pints
570	Oct. 2nd	42.35	1.20	2 pints
572	Oct. 3rd	13.10	.60	1 pint
580	Oct. 7th	14.40	3.75	1 gallon
587	Oct. 13th	10.40	.60	1 pint
(Mail Order)	Oct. 15th	15.65	3.75	1 gallon
611	Oct. 23rd	42.95	3.75	1 gallon
612	Oct. 24th	56.61	3.75	1 gallon
613	Oct. 26th	34.75	3.75	1 gallon
616	Oct. 26th	36.01	2.50	5 pints
617	Oct. 27th	15.	3.75	1 gallon
624	Oct. 30th	16.75	3.75	1 gallon
626	Oct. 31st	65.93	3.75	1 gallon
627	Oct. 31st	22.30	3.75	1 gallon
629	Nov. 2nd	7.85	3.75	1 gallon
633	Nov. 2nd	16.60	2.50	5 pints
634	Nov. 4th	15.28	1.20	2 pints
635	Nov. 4th	13.	2.50	5 pints
636	Nov. 4th	59.60	1.20	2 pints
643	Nov. 6th	20.60	3.75	1 gallon
645	Nov. 6th	12.90	.60	1 pint
653	Nov. 10th	32.35	3.75	1 gallon
654	Nov. 11th	30.10	.60	1 pint
664	Nov. 17th	22.55	.60	1 pint
668	Nov. 18th	8.00	3.75	1 gallon
669	Nov. 18th	52.30	3.75	1 gallon
673	Nov. 18th	23.85	3.75	1 gallon
678	Nov. 19th	29.25	3.75	1 gallon
689	Nov. 23rd	25.95	3.75	1 gallon
690	Nov. 23rd	56.70	3.75	1 gallon
700	Nov. 29th	37.	3.75	1 gallon
706	Nov. 28th	34.60	7.00	2 gallons
707	Nov. 28th	28.01	3.75	1 gallon
721	Dec. 4th	13.10	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
723	Dec. 4th	14.85	7.	2 gallons
729	Dec. 8th	20.95	2.50	5 pints
731	Dec. 9th	16.86	3.75	1 gallon
732	Dec. 9th	17.35	.60	1 pint
739	Dec. 11th	32.65	3.75	1 gallon
741	Dec. 12th	22.25	3.75	1 gallon
748	Dec. 19th	27.70	.60	1 pint
102			307.25	91 gallons
		For 1909		
31	Jan. 18th	37.55	$3.75	1 gallon
39	Jan. 21st	6.45	3.75	1 gallon
42	Jan. 22nd	11.50	7.	2 gallons
48	Jan. 23rd	8.77	3.75	1 gallon
52	Jan. 25th	12.50	3.75	1 gallon
54	Jan. 27th	21.20	.60	1 pint
55	Jan. 27th	7.75	7.	2 gallons
56	Jan. 27th	37.51	7.	2 gallons
61	Jan. 29th	24.02	7.	2 gallons
63	Jan. 29th	14.25	3.75	1 gallon
66	Feb. 1st	15.50	7.	2 gallons
68	Feb. 2nd	27.74	1.20	2 pints
69	Feb. 3rd	18.29	.60	1 pint
70	Feb. 3rd	53.73	7.	2 gallons
71	Feb. 3rd	7.	7.	2 gallons
76	Feb. 4th	10.92	3.75	1 gallon
79	Feb. 5th	28.65	10.20	3 gallons
82	Feb. 6th	24.84	2.50	5 pints
84	Feb. 8th	24.10	3.75	1 gallon
92	Feb. 11th	47.35	3.75	1 gallon
93	Feb. 11th	15.25	2.50	5 pints
99	Feb. 15th	39.75	3.75	1 gallon
102	Feb. 17th	35.40	3.75	1 gallon
117	Feb. 24th	43.95	3.75	1 gallon
119	Feb. 20th	13.16	3.75	1 gallon
127	Feb. 28th	21.85	2.50	5 pints
130	Feb. 29th	47.55	3.75	1 gallon
133	March 1st	35.65	3.75	1 gallon
138	March 2nd	17.45	7.	2 gallons

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Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
139	March 2nd	36.12	3.75	1 gallon
140	March 2nd	41.85	3.75	1 gallon
145	March 4th	28.19	7.	2 gallons
146	March 5th	27.80	16.25	5 gallons
154	March 7th	32.30	2.50	5 pints
156	March 10th	24.35	2.50	5 pints
160	May 11th	24.20	.60	1 pint
176	May 21st	12.70	1.20	2 pints
189	May 30th	23.50	3.75	1 gallon
196	June 2nd	54.09	.60	1 pint
212	April 8th	38.55	2.50	5 pints
219	April 12th	29.60	2.50	5 pints
239	April 20th	15.	3.75	1 gallon
243	April 22nd	11.58	3.75	1 gallon
246	April 22nd	1.20	1.20	2 pints
253	April 24th	3.75	3.75	1 gallon
254	April 26th	51.95	1.20	2 pints
277	May 5th	38.97	.60	1 pint
278	May 5th	51.05	7.	2 gallons
280	May 6th	21.	7.	2 gallons
281	May 6th	32.50	1.20	2 pints
283	May 6th	37.30	7.	2 gallons
286	May 7th	32.15	7.	2 gallons
291	May 11th	339.11	3.75	1 gallon
298	May 13th	38.	.60	1 pint
301	May 13th	31.45	3.75	1 gallon
302	May 13th	12.25	3.75	1 gallon
308	May 17th	15.15	3.75	1 gallon
311	May 18th	23.58	3.75	1 gallon
314	May 18th	21.30	2.50	5 pints
317	May 19th	25.75	3.75	1 gallon
318	May 19th	23.80	3.75	1 gallon
321	May 20th	54.95	2.50	5 pints
323	May 20th	39.45	7.	2 gallons
325	May 22nd	36.70	2.50	5 pints
328	May 28th	23.31	2.50	5 pints
329	May 28th	9.40	.60	1 pint
334	June 2nd	9.19	1.20	2 pints
336	June 4th	21.10	.60	1 pint

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
337	June 4th	29.80	3.75	1 gallon
352	June 12th	31.25	3.75	1 gallon
359	June 14th	28.60	3.75	1 gallon
381	June 24th	12.40	2.50	5 pints
387	June 28th	62.95	2.50	5 pints
389	June 28th	69.23	3.75	1 gallon
390	June 30th	27.15	7.	2 gallons
393	July 5th	3.75	3.75	1 gallon
395	July 5th	33.96	3.75	1 gallon
406	Aug. 3rd	16.80	2.50	5 pints
412	Aug. 4th	21.05	2.50	5 pints
413	Aug. 4th	3.75	3.75	1 gallon
416	Aug. 7th	45.49	7.	2 gallons
419	Aug. 9th	28.45	3.75	1 gallon
429	Aug. 16th	49.85	3.75	1 gallon
443	Aug. 20th	8.60	1.20	2 pints
445	Aug. 23rd	52.33	3.75	1 gallon
446	Aug. 23rd	10.52	7.	2 gallons
448	Aug. 23rd	33.02	7.	2 gallons
449	Aug. 24th	40.42	3.75	1 gallon
Mail Order	Aug. 26th	7.00	7.00	2 gallons
454	Aug. 26th	23.	3.75	1 gallon
455	Aug. 26th	35.28	7.	2 gallons
456	Aug. 30th	40.43	3.75	1 gallon
458	Aug. 31st	16.75	3.75	1 gallon
461	Sept. 2nd	23.95	2.50	5 pints
(Mail Order)	Sept. 3rd	15.25	3.75	1 gallon
464	Sept. 4th	17.80	3.75	1 gallon
465	Sept. 4th	46.83	3.75	1 gallon
476	Sept. 13th	21.50	2.50	5 pints
477	Sept. 13th	32.90	2 50	5 pints
480	Sept. 14th	26.26	3.75	1 gallon
482	Sept. 15th	17.10	2.50	5 pints
485	Sept. 15th	9.65	2.50	5 pints
486	Sept. 16th	13.75	3.75	1 gallon
487	Sept. 16th	14.45	3.75	1 gallon
489	Sept. 17th	39.55	3.75	1 gallon
(Mail Order)	Sept. 21st	15.25	7.00	2 gallons
(Mail Order)	Sept. 23rd	3.75	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
500	Sept. 25th	32.39	3.75	1 gallon
503	Sept. 25th	14.50	7.	2 gallons
504	Sept. 25th	45.20	3.75	1 gallon
511	Sept. 28th	21.60	2.50	5 pints
523	Oct. 1st	9.65	3.75	1 gallon
532	Oct. 5th	29.30	3.75	1 gallon
540	Oct. 8th	7.05	.60	1 pint
542	Oct. 11th	13.35	3.75	1 gallon
544	Oct. 11th	23.20	.60	1 pint
547	Oct. 12th	18.26	3.75	1 gallon
550	Oct. 14th	33.31	3.75	1 gallon
554	Oct. 16th	91.63	3.75	1 gallon
558	Oct. 19th	17.91	.60	1 pint
561	Oct. 20th	25.84	2.50	5 pints
566	Oct. 20th	30.75	3.75	1 gallon
568	Oct. 22nd	36.49	7.	2 gallons
570	Oct. 22nd	39.25	7.	2 gallons
574	Oct. 28th	70.65	7.	2 gallons
(Mail Order)	Oct. 9th	16.17	7.	2 gallons
576	Oct. 28th	12.20	3.75	1 gallon
579	Oct. 30th	11.60	3.75	1 gallon
582	Nov. 1st	20.44	1.20	2 pints
584	Nov. 1st	3.75	3.75	1 gallon
587	Nov. 3rd	9.	7.	2 gallons
588	Nov. 3rd	23.30	3.75	1 gallon
591	Nov. 3rd	42.85	3.75	1 gallon
592	Nov. 3rd	5.90	2.50	5 pints
601	Nov. 8th	36.25	3.75	1 gallon
602	Nov. 9th	28.25	3.75	1 gallon
603	Nov. 9th	16.35	3.75	1 gallon
604	Nov. 10th	27.15	7.	2 gallons
605	Nov. 10th	16.20	3.75	1 gallon
607	Nov. 10th	19.87	3.75	1 gallon
(Mail Order)	Nov. 13th	24.38	2.50	5 pints
612	Nov. 13th	41.50	7.	2 gallons
613	Nov. 13th	29.08	3.75	1 gallon
614	Nov. 13th	29.50	16.25	5 gallons
615	Nov. 13th	7.	7.	2 gallons
616	Nov. 13th	32.50	32.50	10 gallons

Orders.

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
617	Nov. 15th	10.75	3.75	1 gallon
618	Nov. 15th	17.95	7.	2 gallons
619	Nov. 15th	9.75	7.	2 gallons
(Mail Order)	Nov. 19th	7.00	7.	2 gallons
627	Nov. 25th	34.64	3.75	1 gallon
637	Nov. 30th	22.60	3.75	1 gallon
638	Nov. 30th	7.37	3.75	1 gallon
649	Dec. 7th	18.10	3.75	1 gallon
655	Dec. 8th	9.89	1.20	2 pints
656	Dec. 8th	10.75	3.75	1 gallon
657	Dec. 8th	7.	7.	2 gallons
659	Dec. 9th	25.10	1.20	2 pints
660	Dec. 10th	8.50	2.50	5 pints
663	Dec. 10th	15.25	3.75	1 gallon
669	Dec. 15th	12.37	3.75	1 gallon
161			$651.85	187 gallons
		For 1910.		
13	Jan. 6th	19.15	$3.75	1 gallon
17	Jan. 7th	20.35	7.	2 gallons
22	Jan. 10th	9.75	1.20	2 pints
35	Jan. 17th	60.85	3.75	1 gallon
54	Jan. 25th	16.70	.60	1 pint
60	Jan. 26th	19.	3.75	1 gallon
61	Jan. 26th	18.70	7.	2 gallons
65	Jan. 31st	65.37	7.	2 gallons
69	Feb. 2nd	17.42	.60	1 pint
76	Feb. 4th	10.60	7.	2 gallons
79	Feb. 7th	23.30	3.75	1 gallon
81	Feb. 8th	16.25	16.25	5 gallons
Mail Order	Feb. 12th	7.	7.	2 gallons
89	Feb. 14th	19.45	3.75	1 gallon
105	Feb. 24th	15.34	3.75	1 gallon
107	Feb. 24th	27.38	3.75	1 gallon
108	Feb. 24th	33.03	3.75	1 gallon
115	March 10th	49.24	3.75	1 gallon
118	March 11th	35.25	3.75	1 gallon
123	March 15th	9.	2.50	5 pints
124	March 15th	11.25	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
125	March 15th	56.35	7.00	2 gallons
127	March 15th	24.10	7.00	2 gallons
132	March 16th	20.75	3.75	1 gallon
133	March 18th	7.	7.00	2 gallons
143	March 21st	25.50	2.50	5 pints
173	Apr. 4th	32.30	.60	1 pint
149	March 23rd	10.49	3.75	1 gallon
Mail Order	Apr. 29th	7.	7.	2 gallons
192	May 11th	25.50	2.50	5 pints
195	May 12th	11.65	3.75	1 gallon
197	May 12th	37.35	3.75	1 gallon
200	May 14th	22.93	3.75	1 gallon
201	May 14th	11.95	3.75	1 gallon
205	May 20th	21.15	3.75	1 gallon
217	May 20th	7.46	7.	2 gallons
221	May 24th	25.76	7.	2 gallons
229	May 26th	4.65	3.75	1 gallon
230	May 26th	32.25	3.75	1 gallon
237	May 31st	20.34	2.50	5 pints
238	June 1st	26.68	3.75	1 gallon
249	June 6th	15.09	3.75	1 gallon
251	June 6th	12.30	2.50	5 pints
258	June 9th	57.45	2.50	5 pints
260	June 9th	7.75	3.75	1 gallon
Mail Order	July 1st	7.	7.	2 gallons
350	Aug. 5th	40.99	2.50	5 pints
353	Aug. 8th	13.50	3.75	1 gallon
356	Aug. 9th	75.11	7.	2 gallons
361	Aug. 11th	7.	7.	2 gallons
362	Aug. 11th	16.65	3.75	1 gallon
365	Aug. 12th	15.45	3.75	1 gallon
368	Aug. 18th	20.	1.20	2 pints
380	Aug. 18th	9.05	3.75	1 gallon
381	Aug. 19th	71.80	3.75	1 gallon
384	Aug. 19th	20.68	3.75	1 gallon
390	Aug. 23rd	15.10	3.75	1 gallon
397	Aug. 29th	20.20	3.75	1 gallon
402	Aug. 30th	15.20	2.50	5 pints
403	Aug. 31st	7.	7.	2 gallons

Orders.

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
404	Aug. 31st	22.75	3.75	1 gallon
405	Sept. 1st	23.40	7.	2 gallons
412	Sept. 6th	13.65	7.	2 gallons
421	Sept. 9th	30.10	7.	2 gallons
422	Sept. 9th	13.30	10.20	3 gallons
424	Sept. 9th	22.20	7.	2 gallons
429	Sept. 12th	15.25	7.	2 gallons
430	Sept. 12th	15.25	7.	2 gallons
431	Sept. 13th	41.66	16.25	5 gallons
432	Sept. 13th	23.25	3.75	1 gallon
435	Sept. 14th	28.52	3.75	1 gallon
438	Sept. 15th	11.25	3.75	1 gallon
440	Sept. 16th	23.34	3.75	1 gallon
442	Sept. 19th	35.65	3.75	1 gallon
449	Sept. 27th	53.87	.60	1 pint
452	Sept. 28th	20.05	3.75	1 gallon
480	Oct. 17th	38.20	2.50	5 pints
487	Oct. 20th	36.25	3.75	1 gallon
489	Oct. 21st	19.69	3.75	1 gallon
504	Oct. 28th	25.75	3.75	1 gallon
505	Oct. 30th	42.72	7.	2 gallons
509	Nov. 1st	20.44	7.	2 gallons
516	Nov. 4th	41.75	7.	2 gallons
518	Nov. 5th	22.27	3.75	1 gallon
521	Nov. 7th	52.80	7.	2 gallons
523	Nov. 7th	28.75	7.	2 gallons
524	Nov. 8th	30.30	3.75	1 gallon
525	Nov. 8th	28.33	3.75	1 gallon
526	Nov. 8th	20.25	3.75	1 gallon
529	Nov. 8th	43.45	3.75	1 gallon
530	Nov. 9th	11.05	7.	2 gallons
532	Nov. 9th	12.60	3.75	1 gallon
533	Nov. 10th	31.60	7.	2 gallons
536	Nov. 10th	3.75	3.75	1 gallon
Mail Order	Nov. 11th	7.	7.	2 gallons
546	Nov. 15th	14.30	7.	2 gallons
547	Nov. 15th	41.10	7.	2 gallons
554	Nov. 18th	6.75	3.75	1 gallon
555	Nov. 18th	8.45	2.50	5 pints

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
556	Nov. 18th	18.70	3.75	1 gallon
564	Nov. 22nd	15.40	7.	2 gallons
566	Nov. 22nd	13.47	7.	2 gallons
567	Nov. 22nd	8.	7.	2 gallons
573	Nov. 25th	63.70	7.	2 gallons
576	Nov. 29th	30.27	3.75	1 gallon
579	Nov. 30th	22.95	3.75	1 gallon
583	Dec. 1st	6.95	2.50	5 pints
585	Dec. 1st	5.75	3.75	1 gallon
603	Dec. 13th	16.95	.60	1 pint
609	Dec. 15th	12.60	2.50	5 pints
613	Dec. 16th	18.15	2.50	5 pints
113			$499.35	140 gallons
		For 1911.		
3	Jan. 3rd	43.13	7.	2 gallons
6	Jan. 5th	19.95	7.	2 gallons
8	Jan. 6th	30.20	7.	2 gallons
9	Jan. 6th	8.85	3.75	1 gallon
14	Jan. 9th	7.70	3.75	1 gallon
16	Jan. 9th	20.50	3.75	1 gallon
17	Jan. 9th	69.29	16.25	5 gallons
18	Jan. 10th	20.45	3.75	1 gallon
21	Jan. 10th	20.75	3.75	1 gallon
30	Jan. 10th	14.68	3.75	1 gallon
33	Jan. 14th	26.	7.	2 gallons
41	Jan. 17th	28.30	2.50	5 pints
45	Jan. 18th	62.95	2.50	5 pints
46	Jan. 19th	60.25	3.75	1 gallon
47	Jan. 19th	8.20	3.75	1 gallon
64	Jan. 27th	23.10	3.75	1 gallon
72	Feb. 1st	20.50	16.25	5 gallons
73	Feb. 1st	19.	16.25	5 gallons
74	Feb. 1st	13.	7.	2 gallons
76	Feb. 1st	9.25	7.	2 gallons
77	Feb. 2nd	20.50	3.75	1 gallon
79	Feb. 2nd	24.85	10.20	3 gallons
84	Feb. 9th	68.95	3.75	1 gallon
88	Feb. 11th	15.63	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
90	Feb. 13th	42.26	3.75	1 gallon
91	Feb. 14th	21.10	3.75	1 gallon
96	Feb. 17th	10.65	3.75	1 gallon
97	Feb. 17th	26.75	7.	2 gallons
102	Feb. 21st	9.75	7.	2 gallons
104	Feb. 21st	5.55	3.75	1 gallon
110	Feb. 24th	21.50	2.50	5 pints
123	March 3rd	9.25	3.75	1 gallon
131	March 8th	46.64	3.75	1 gallon
141	March 14th	37.32	3.75	1 gallon
152	March 17th	12.35	3.75	1 gallon
161	March 23rd	20.35	3.75	1 gallon
169	March 28th	68.90	7.	2 gallons
180	April 3rd	37.45	3.75	1 gallon
181	April 3rd	37.95	3.75	1 gallon
184	April 4th	38.65	7.	2 gallons
185	April 5th	42.15	3.75	1 gallon
189	April 6th	31.15	7.	2 gallons
191	April 6th	26.	7.	2 gallons
195	April 7th	28.35	7.	2 gallons
198	April 10th	15.80	3.75	1 gallon
200	April 11th	25.	7.	2 gallons
203	April 12th	47.40	3.75	1 gallon
207	April 14th	36.60	3.75	1 gallon
208	April 14th	58.40	1.20	2 pints
217	April 16th	23.15	3.75	1 gallon
219	April 17th	69.54	3.75	1 gallon
229	April 26th	7.	3.75	1 gallon
236	April 29th	18.15	3.75	1 gallon
237	April 29th	16.25	16.25	5 gallons
238	April 29th	20.20	10.20	3 gallons
241	May 2nd	45.62	7.	2 gallons
242	May 3rd	100.06	3.75	1 gallon
244	May 4th	12.15	3.75	1 gallon
258	May 11th	46.50	3.75	1 gallon
259	May 17th	58.90	1.20	2 pints
284	May 31st	64.88	3.75	1 gallon
290	June 1st	26.10	7.	2 gallons
300	June 10th	43.95	7.	2 gallons
301	June 10th	17.50	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
302	June 12th	9.	3.75	1 gallon
305	June 13th	96 10	7.	2 gallons
306	June 14th	69.70	3.75	1 gallon
307	June 14th	22.40	3.75	1 gallon
310	June 15th	12.25	3.75	1 gallon
313	June 17th	61.75	3.75	1 gallon
317	June 19th	24.49	3.75	1 gallon
319	June 21st	13.40	3.75	1 gallon
326	June 27th	28.25	3.75	1 gallon
327	June 28th	19.40	3.75	1 gallon
328	July 1st	7.	7.	2 gallons
337	Aug. 15th	15.75	3.75	1 gallon
Mail Order	Aug. 24th	7.	7.	2 gallons
Mail Order	Sept. 8th	13.50	3.75	1 gallon
407	Sept. 18th	42.18	3.75	1 gallon
414	Sept. 19th	24.85	3.75	1 gallon
416	Sept. 19th	49.57	3.75	1 gallon
417	Sept. 20th	69.25	3.75	1 gallon
429	Sept. 25th	34.31	7.	2 gallons
430	Sept. 25th	52.92	3.75	1 gallon
433	Sept. 25th	39.85	3.75	1 gallon
439	Sept. 27th	47.27	7.	2 gallons
441	Sept. 27th	64.60	7.	2 gallons
445	Sept. 29th	50.60	7.	2 gallons
448	Oct. 2nd	27.06	3.75	1 gallon
449	Oct. 2nd	34.90	1.20	2 pints
450	Oct. 2nd	97.33	16.25	5 gallons
451	Oct. 3rd	34.73	3.75	1 gallon
452	Oct. 3rd	28.68	7.	2 gallons
453	Oct. 4th	28.95	3.75	1 gallon
454	Oct. 4th	51.69	3.75	1 gallon
455	Oct. 4th	48.15	7.	2 gallons
458	Oct. 5th	67.25	3.75	1 gallon
462	Oct. 6th	21.32	3.75	1 gallon
Mail Order	Oct. 7th	16.25	16.25	5 gallons
471	Oct. 10th	25.13	3.75	1 gallon
Mail Order	Oct. 11th	20.20	16.25	5 gallons
481	Oct. 13th	76.08	3.75	1 gallon
485	Oct. 17th	58.85	3.75	1 gallon
486	Oct. 18th	16.80	10.20	3 gallons

Orders.

Order No.	Date	Amount Order	Amount of Quin-Coco	Quantity Quin-Coco
487	Oct. 18th	33.50	10.20	3 gallons
488	Oct. 18th	28.46	3.75	1 gallon
491	Oct. 19th	38.93	3.75	1 gallon
496	Oct. 20th	49.60	3.75	1 gallon
499	Oct. 25th	57.59	3.75	1 gallon
500	Oct. 25th	56.87	3.75	1 gallon
501	Oct. 25th	44.60	3.75	1 gallon
507	Oct. 31st	16.15	3.75	1 gallon
512	Nov. 6th	63.75	3.75	1 gallon
Mail Order	Nov. 11th	9.70	7.	2 gallons
521	Nov. 14th	76.80	3.75	1 gallon
522	Nov. 14th	41.54	3.75	1 gallon
524	Nov. 16th	23.95	3.75	1 gallon
546	Nov. 30th	9.20	3.75	1 gallon
558	Dec. 10th	27.75	3.75	1 gallon
Mail Order	Dec. 11th	22.50	16.25	5 gallons
120			$642.20	186 gallons

For 1912

1	Jan. 3rd	39.40	13.	4 gallons
6	Jan. 9th	27.50	3.75	1 gallon
10	Jan. 10th	7.	7.	2 gallons
11	Jan. 10th	21.45	3.75	1 gallon
14	Jan. 12th	50.	3.75	1 gallon
15	Jan. 12th	67.99	3.75	1 gallon
34	Jan. 16th	24.90	3.75	1 gallon
35	Jan. 16th	72.65	7.	2 gallons
39	Jan. 18th	10.40	3.75	1 gallon
40	Jan. 18th	18.	3.75	1 gallon
43	Jan. 18th	16.05	3.75	1 gallon
44	Jan. 18th	26.32	3.75	1 gallon
53	Jan. 23rd	29.85	3.75	1 gallon
54	Jan. 24th	33.70	3.75	1 gallon
55	Jan. 24th	13.35	3.75	1 gallon
59	Jan. 26th	18.10	7.	2 gallons
60	Jan. 26th	5.85	.60	1 pint
62	Jan. 27th	18.45	2.50	5 pints
64	Jan. 27th	13.93	3.75	1 gallon
70	Jan. 21st	30.70	7.	2 gallons

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
Mail Order	Jan. 26th	7.	7.	2 gallons
71	Jan. 21st	38.45	16.25	5 gallons
Mail Order	Jan. 30th	16.25	16.25	5 gallons
72	Jan. 31st	40.63	3.75	1 gallon
73	Jan. 31st	7.	7.	2 gallons
74	Jan. 31st	17.	3.75	1 gallon
76	Jan. 31st	36.70	3.75	1 gallon
78	Feb. 2nd	30.80	13.	4 gallons
80	Feb. 5th	52.20	13.	4 gallons
82	Feb. 5th	47.42	3.75	1 gallon
83	Feb. 5th	47.70	3.75	1 gallon
87	Feb. 7th	32.25	3.75	1 gallon
88	Feb. 7th	11.75	3.75	1 gallon
102	Feb. 14th	32.87	3.75	1 gallon
105	Feb. 15th	43.50	3.75	1 gallon
113	Feb. 17th	26.79	3.75	1 gallon
117	Feb. 19th	34.25	3.75	1 gallon
170	March 12th	40.08	3.75	1 gallon
173	March 14th	30.93	3.75	1 gallon
180	March 18th	14.80	3.75	1 gallon
192	March 22nd	19.30	3.75	1 gallon
Mail Order	March 21st	10.13	3.75	1 gallon
194	March 25th	67.25	3.75	1 gallon
198	March 27th	58.65	2.50	5 pints
Mail Order	April 2nd	21.78	3.75	1 gallon
206	April 4th	7.	7.	2 gallons
208	April 6th	38.10	16.25	5 gallons
209	April 6th	34.73	16.25	5 gallons
211	April 8th	20.75	7.	2 gallons
212	April 8th	37.50	3.75	1 gallon
213	April 9th	62.40	15.	4 gallons
216	April 9th	20.45	3.75	1 gallon
223	April 13th	14.25	3.75	1 gallon
224	April 13th	28.45	3.75	1 gallon
239	April 24th	19.25	16.25	5 gallons
240	April 24th	19.55	7.	2 gallons
241	April 24th	14.25	10.20	3 gallons
248	April 26th	30.74	13.	4 gallons
252	April 29th	33.70	7.	2 gallons
256	May 1st	23.50	3.75	1 gallon

Order No.	Date	Amount of Order	Amount of Quin-Coco	Quantity Quin-Coco
257	May 1st	26.25	.60	1 pint
Mail Order	May 24th	14.80	3.75	1 gallon
229	April 17th	13.35	3.75	1 gallon
232	April 19th	30.18	3.75	1 gallon
233	April 22nd	29.80	3.75	1 gallon
234	April 22nd	33.48	3.75	1 gallon
237	April 24th	18.50	10.20	3 gallons
238	April 24th	16.65	7.	2 gallons
272	May 9th	65.72	3.75	1 gallon
274	May 14th	55.	3.75	1 gallon
276	May 15th	22.90	3.75	1 gallon
356	July 24th	52.99	3.75	1 gallon
360	Aug. 3rd	14.17	3.75	1 gallon
361	Aug. 5th	78.30	3.75	1 gallon
365	Aug. 6th	67.45	16.25	5 gallons
366	Aug. 6th	25.41	.60	1 pint
Mail Order	Aug. 7th	7.	7.	2 gallons
368	Aug. 7th	41.35	7.	2 gallons
369	Aug. 7th	15.80	3.75	1 gallon
370	Aug. 7th	16.15	3.75	1 gallon
376	Aug. 12th	20.08	3.75	1 gallon
390	Aug. 16th	29.35	3.75	1 gallon
392	Aug. 17th	27.65	3.75	1 gallon
398	Aug. 20th	16.25	16.25	5 gallons
399	Aug. 20th	39.98	7.	2 gallons
400	Aug. 20th	12.40	7.	2 gallons
402	Aug. 21st	35.80	2.50	5 pints
403	Aug. 22nd	44.27	10.20	3 gallons
408	Aug. 23rd	128.15	10.20	3 gallons
409	Aug. 24th	22.30	3.75	1 gallon
411	Aug. 26th	9.15	3.75	1 gallon
414	Aug. 29th	51.43	3.75	1 gallon
417	Aug. 30th	22.14	3.75	1 gallon
93			$544.75	161 gals. 2 pts.

Q6. I note in the list of orders for the year 1907 that there are wide jumps between numbers. For example, there appears to be a jump from Order No. 193, dated April 15th, to Order No. 376, dated Aug. 1st. Another jump from Order No. 387 dated August 5th to Order No. 505, dated Sept. 27th. Please explain as to this?

By Mr. Rawle: Same objections and as not rebuttal and as irrelevant.

A. That is due to the fact already explained that numbers of my orders were misplaced, lost or destroyed, as is always the case in looking up old papers.

Q7. The seventeen orders, as listed, for the year 1907, amount in value of Quin-Coco to $39.15. Would this be a fair estimate of the amount of business you did in Quin-Coco for that year?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant and as calling for a mere guess on the part of the witness.

A. The number of missing orders shows conclusively that the total amount of sales on Quin-Coco for 1907 could not possibly be a proper estimate, as given in this record.

Q8. I notice that the number of orders listed for 1908 is a hundred and two, showing sales of Quin-Coco amounting to $307.25. I also note that there is a jump between orders 113, dated February 19th, and 214, dated March 30th; another jump between orders 268, dated April 20th, and 420, dated July 11th. Besides a number of other jumps of lesser magnitude. I also note that the number of the last order listed is 748. From these figures what would be your best estimate of the amount of Quin-Coco you sold in the year 1908?

By Mr. Rawle: Same objections.

A. I would be very glad indeed if all the orders for 1908 could have been found, for as that was my second year in the sale of Quin-Coco, and finding it to be

such a wonderful repeater I feel certain that I had it on at least seventy-five per cent. of my orders. The exact amount I could not possibly give on account of the missing orders.

Q9. What proportion of your total sales for the year 1908, would you say conservatively, is listed on this list?

By Mr. Rawle: Objected to as not proper for rebuttal, as not relevant or admissible, and as calling for guesswork.

A. I would judge not exceeding forty per cent.

Q10. I note that the list for 1909 contains a hundred and sixty-one orders, representing a hundred and eighty-seven gallons of Quin-Coco of the value of $651.85. Please make the same explanation or answer respecting this year?

By Mr. Rawle: Same objections.

A. Quin-Coco was one of my hobbies in the line I sold. I always tried to get each man to try it. If he only bought it in pints he did not interest me, but if his customers were consumers of a chocolate preparation I always talked the gallon price to him. Consequently as above stated I sincerely believe that at least seventy-five per cent. of my orders would show Quin-Coco. I usually sold approximately seven hundred orders per year. In this instance the total amount of orders for Quin-Coco amounts to only a hundred and sixty-one, which is nothing like the smallest estimate even that could possibly be put upon my sales for Quin-Coco during any year.

Q11. For the year 1910, I note that you have in this list a hundred and thirteen orders, representing a hundred and forty gallons of Quin-Coco and total value of $499.35.

For the year 1911 I note that you have a list of 120 orders, representing 186 gallons of Quin-Coco of a total value of $642.30.

For the year 1912 up to August 30th I note you have a list of 93 orders representing 161 gallons of Quin-Coco, and value of $544.75.

Does your explanation as to the previous years apply with equal pertinency to the years I have just referred to?

Objections repeated.

A. It most positively does.

Q12. I show you a letter on the letter head of Wm. R. Warner & Co., dated Philadelphia, Nov. 29, 1909, and ask you to state whether or not this is an original letter received by you and if it is to read it into the record?

The letter is submitted to counsel for defendant.

By Mr. Rawle: Same objections and because the witness has already been examined in the *prima facie case.*

By Mr. Rawle: No objection is made to the authenticity of the letter.

A. This is an original letter received by me and reads as follows:

(Letter No. 1)

"Philadelphia, November 29, 1909.

Friend Kelton:

Your letter of November 27th with copies on Quin-Coco orders received and it certainly pleases us very much to note the nice business you are doing on Quin-Coco. It only proves that a good article in the hands of a salesman can be sold and will repeat and the more of them you can get started, the larger your orders will become, and under our contract with you, you reap a benefit with us, as every dollar's extra business means a commission to you.

Too bad that your health is not as good as it

should be, for a salesman, of all men, must be a good feeler to be able to induce the dealer to give an order, especially on our proposition. Order takers are not in the game, and fools fall by the wayside.

As you know, there is a prize contest on for December, and we certainly hope to see you as one of the Prize Winners.

With best wishes, and kind regards to yourself, and wife, we are,

Respectfully yours,

Wm. R. Warner & Co.,

H. Pfeiffer, V. Prest."

The letter is offered in evidence and marked "Plaintiff's Exhibit, Kelton Correspondence, Letter No. 1."

Q13. Have you ever had any means of knowing as to the amount of Quin-Coco manufactured at defendant's St. Louis laboratories, and if so, please state the means of your knowledge and the amount manufactured as ascertained by such means?

By Mr. Rawle: Objected to unless the witness brings home his evidence to some duly qualified officer of the defendant company, directly.

A. In going through the laboratories in the St. Louis office on December 23rd, 1909, I made notes of several things which particularly interested me. Among these was the immense cost of shipping the products to the State of California. Another was the amount of Ingluvin seen at one time in the house. Another was the number of employees. Another a very large order of elixirs and fluid extracts which had been taken by the Arkansas representative. And still another was the item in question, namely, Quin-Coco, which on the sheet I have in my possession shows that Mr. Garvin, the head chemist, informed me that the Pfeiffer Chemical Company

at this time were manufacturing a hundred and sixty gallons of Quin-Coco a week.

By Mr. Rawle: The answer is objected to because the statement alleged to have been made to the witness by Mr. Garvin can not affect the rights of the defendant, because the records from which he made these surreptitious notes are not produced, or even testified to.

Q14. What is the paper you hold in your hand?

A. This is the notes I made December 23rd, 1909.

Q15. Were these notes made by you personally and at that time?

A. They were, they are in my own handwriting.

By Mr. Bradford: The sheet in question is offered in evidence and marked "Complainant's Exhibit, Kelton Memorandum 1909".

For the convenience of the court the Examiner is requested to copy sheet on the record.

By Mr. Rawle: The offer of the sheet and placing of it on the record is objected to as not rebuttal, as not relevant and immaterial and because the only possible use that can be made of the piece of paper is by way of refreshing the witness' memory after proof that it was contemporaneously made.

The sheet reads as follows:

"Shipment to San Francisco, Cal.
1775 # — $34.75.
$6480 Ingluvin
500 employes.
200 gallons Comstock
160 " Quin-Coco a week.
Dr. J. F. Fletcher.
12 doz. Vitalia $24.50
6/29
7114

Dec. 23, 1909."

Q16. What other evidence have you of your visit to the St. Louis Laboratories on Dec. 23rd, 1909?

By Mr. Rawle: Objected to for the same reasons.

A. I have my itinerary card for the day, dated December 23rd, 1909, Thursday. These cards were furnished by the house, and began with the duties for the early morning and until the close of the day.

Q17. Do you remember distinctly what Mr. Garvin said to you at this time in reference to the quantity of Quin-Coco he was manufacturing each week?

By Mr. Rawle: Objected to for the same reasons and because statements by Garvin do not bind the defendant.

A. I remember very distinctly that the amount of Quin-Coco which Mr. Garvin stated to me they were manufacturing each week was a further incentive on my part to push the article named. I remember I told the trade of the amount of this preparation the house was manufacturing, showing to them that it was one of the best articles for a reproducer they could possibly stock in the drug store.

Q18. I show you a letter on the letter head of the Pfeiffer Chemical Company, dated January 4, 1905, and ask you if this is an original letter and if it is to read it into the record?

A. This is an original letter received by me. The letter reads as follows:

(Letter No. 2)

"St. Louis, Jan. 4, 1905.

Mr. Alva Lee Kelton,
Nashville, Tenn.

Friend Kelton:—

Your orders etc. received. We are pleased to note that you are '*taking care of Memphis*' and can assure you that you can not please us better than to give your competitor a black eye, not only in

Memphis, but in every other town in your territory.

Under separate cover we are mailing Bradstreets for the State of Tennessee.

We hope 1906 will prove the banner year for you and that you will be fortunate in not having any unusual obstacles to overcome.

You can rest assured that we will aid you whenever possible.

With kind regards, we are,

Respectfully yours,

Pfeiffer Chemical Co.,

G. A. Pfeiffer, Secy."

By Mr. Rawle: The letter is objected to as immaterial and irrelevant and not rebuttal.

Q19. I show you another letter on the letter head of the Pfeiffer Chemical Company, dated St. Louis, March 15th, 1906, ask you if it is an original letter and if so to read it into the record?

A. This is an original letter received by me. It reads as follows:

(Letter No. 3)

"St. Louis, Mar. 15, 1906.

Mr. Alva Lee Kelton,

Bristol, Tenn.

Friend Kelton:—

Your orders, letters, etc., received. We enclose as usual notations in reference to accounts together with expense check and salary check to Mar. 15th.

We note with a great deal of satisfaction that your business this year is keeping up well. Make it a point to see that your customers when you have left him has sufficient goods of what you are selling to last him until your next trip. Do not let up on your efforts to sell goods under P. C. Co.'s name. By fulfilling these two plans to the

limit, you will freeze out practically every competitor in your territory, and will make the strongest-hearted salesman weak when he realizes the strength of the opposition and the proposition he is up against.

The P. C. Co., while often pleased with the business they get, are not satisfied with anything less than all the business in their line. In other words, we want it all.

We note you overlooked carrying out the balance on hand on your last book. The correct amount to carry forward to book #11 is $38.55.

With kind regards, and best wishes, we are,

Respectfully yours,

Pfeiffer Chemical Co.,

G. A. Pfeiffer, Secy."

By Mr. Rawle: Objected to for the same reasons and because the date, 1906, is more than two years before the defendants had anything to do with Quin-Coco.

By Mr. Bradford: Both letters are offered in evidence, and marked respectively "Plaintiff's Exhibit, Kelton Correspondence, Letter No. 2" and "Letter No. 3".

By Mr. Rawle: Same objections are repeated to the offer.

Q20. I show you another letter on the letter head of the Pfeiffer Chemical Company, dated St. Louis, Mar. 30, 1906, and ask you if it is an original letter and if so to read it into the record?

A. This is an original, highly prized, received by me. It reads as follows:

(Letter No. 4)

"St. Louis, Mar. 30, 1906.

Mr. Alva Lee Kelton,

Memphis, Tenn.

Friend Kelton:—

Your business from Memphis is certainly a big surprise. You are getting to be as good a

man as the President of the Company and we doubt if we could have done as well. This is certainly big business when you reach over $200.00 a day, but 'Nothing succeeds like success'.

Now that you have them on the run keep it that way.

Hoping you are enjoying good health, and with kind regards, we are,

Respectfully yours,
Pfeiffer Chemical Co."

By MR. RAWLE: Objected to for the same reason.

By MR. BRADFORD: This letter is also offered in evidence and marked "Plaintiff's Exhibit, Kelton Correspondence., Letter No. 4."

By MR. RAWLE: Same objection to exhibit.

Q21. I also show you a letter of a similar character dated Dec. 14, 1905, and ask you if it is an original letters and if so to read it into the record?

A. This is an original letter received by me and reads as follows:

(Letter No. 5)

"St. Louis, Dec. 14, 1905.

"Mr. Alva Lee Kelton,
Nashville, Tenn.

Friend Kelton:—

Your orders, etc., received. We note that business is keeping up in spite of the nearness of the Holidays. We realize that at this time orders are more difficult to get than in seasonable times, you can rest assured that they are more desired, and appreciated by the House.

Are glad to note that you and Mr. H. Pfeiffer had a pleasant and agreeable time together.

With kind regards we are,

Respectfully yours,
Pfeiffer Chemical Co.,
G. A. Pfeiffer, Secy."

By MR. RAWLE: Same objections.

Q22. I also show you another letter on the letter head of the Wm. R. Warner Co., dated Sept. 29, 1908, and ask you if it is an original letter and if so to read it into the record?

A. This is an original letter and reads as follows:

(Letter No. 6)

"Philadelphia, September 29, 1908.

Friend Kelton:

Your letter of September 27th received and the writer is always pleased to hear from you. Am afraid you rather over-estimate his talent as a letter-writer for really Friend Kelton, you are the only salesman that has given me such a strong endorsement in this line. If at some future time I am out of a job and apply for a position as correspondent I am surely going to refer them to you for endorsement.

In reference to Mr. Henry Pfeiffer he is now on his circuit trip, which does not however include your territory. Will be back here about October 15th, then he will make another circuit trip which may or may not lead him to Tennessee. In either case however you will be advised. You can rest assured that absolute justice will be done in the matter of territory division. We do not want any man to be cramped for room to use his ability, neither do we desire that the territory be neglected.

With best wishes, we are,

Respectfully yours,

Wm. R. Warner & Co.,

G. A. Pfeiffer."

By Mr. Rawle: Same objection except as to date.

Q23. I also show you another letter dated August 12, 1907, and ask you if it is an original letter and if so to read it into the record?

A. This is an original letter and reads as follows:

(Letter No. 7)

"Aug. 12, 1907.

Friend Kelton:

Your letters also notation on circular letter received. It is certainly a pleasure to have a traveling man that is in harmony with the house, and the house in harmony with the traveling man. It does one good to see the traveler take these letters in the spirit they are given, that is to help do more business so that we can pay them more money for the work they are doing, instead of every time they receive a letter, scrutinize it with a view of sending a kick back.

We also note carefully what you say in regard to Dr. Glass.

Hoping business will continue good with you, we are,

Respectfully yours,
Pfeiffer Chemical Co.,
H. Pfeiffer, Prest."

By Mr. Rawle: Same objection and also as to date.

Q24. I also show you another letter dated Nov. 30, 1908 and ask you if it is an original letter and if so to read it into the record?

A. This is an original letter and reads as follows:

(Letter No. 8)

"Nov. 30, 1908.

Friend Kelton:

We return herewith the letter you received, also copy of our reply to the letter and remittance we received from the Doctor. Wish to say the Doctor has taken a rather hasty view in blaming us for rough handling by the Railroad Company, and as to the error of Cold Tablets, can say, our packers and checkers are human and with a line, comprising about *fifteen thousand items*, mistakes will occasionally creep in.

Believe me can truthfully say the Doctor has in his day made a mistake or two himself. Don't you think so?

Hope you can get him in line again, and we can assure you we shall be glad to use our best efforts to bring about that result.

Cordially yours,
Pfeiffer Chemical Company,
G. D. Merner, Treas."

G.D.M/4
Recd. Dec. 5, 1908.
Alva Lee Kelton.

By Mr. Rawle: Same objection, but not as to date.

Q25. I hand you another letter dated August 24th, 1903, and ask you if it is an original letter and if so to read it into the record?

A. This is an original letter and reads as follows:

(Letter No. 9)

"St. Louis, Aug. 24, 1903.

Mr. Frank Gleaves,
Nashville, Tenn.

Dear Sir:—

Our Mr. Kelton requested us to write you in regard to himself. We will say that Mr. Kelton has been with us over a year and we have always found him reliable and are satisfied that he will not enter into any contract that he is not able to live up to, for we consider him careful and conservative.

We are,
Respectfully yours,
Pfeiffer Chemical Co.,
H. Pfeiffer, Prest."

By Mr. Rawle: Same objections.

By Mr. Bradford: The last five letters above

produced and read into the record, are offered in evidence and marked "Plaintiff's Exhibit, Kelton Correspondence, Letter No. 5", and "Letter No. 6", "Letter No. 7", "Letter No. 8" and "Letter No. 9", respectively.

By Mr. Rawle: Same objections to the offer of exhibits.

Pursuant to notice given at noon, an adjournment is now taken for the purpose of going to Mobile, Ala., and taking the deposition of witness Larkin E. Edmondson, of that city, which will appear in the record, immediately following the examination of the witness Kelton.

New Orleans, La.,
St. Charles Hotel,
August 15th, 1916.
9.30 a. m.

Met pursuant to adjournment (from Mobile, Ala.).

Parties present as before.

It is agreed that counsel for defendant may place of record any objections to questions, answers and documents introduced by this witness at the end of the examination along this line, to be of the same force and effect as if made following each question, answer or exhibit.

Q26. I think it has been made of record in your former deposition that your relations with Mr. Henry Pfeiffer were of a friendly, personal character, as well as agreeable in a business way. Is this true and have you any documentary evidence to this fact and to the

character of the relations existing between you and the other heads or officers of the Pfeiffer Chemical Company and the Wm. R. Warner & Co.?

A. My pleasant business relations began with Mr. Henry Pfeiffer when I was just entering the business arena as it were of the world. I have always looked upon him as my tutor as a salesman and I made no small success under his supervising hand. Our relations have always been and now are the most pleasant possible. Mr. Pfeiffer formerly made numbers of trips with me, these trips varying from one or two days to a week or ten days each, and during this time we had ample time to become thoroughly acquainted with one another, he realizing my method as a salesman and my record as a man. He has spent as much as a whole week as a guest in my home in Nashville, Tenn. By way of pleasant parenthesis I would state that my wife and children are particularly fond of Mr. Pfeiffer.

Yes, I have a number of letters and documents to show that the business and social relations between Mr. Henry Pfeiffer and Mr. G. A. Pfeiffer, Mr. G. D. Merner, and other members of the Pfeiffer Chemical Company and Wm. R. Warner & Co. concerns and myself were and are, so far as I am concerned, the most pleasant and agreeable to be found.

Any man might well be proud to show these documents I am producing to show the mutual confidence existing between the members of the concerns above mentioned and myself, and the appreciation of my employers for my efforts in their behalf. I was always absolutely conscientious in every business transaction I made for the Pfeiffer Chemical Company and the Wm. R. Warner & Co., and there is no man to whom I have ever sold a bill of goods whom I would dread to meet.

I have with me a number of original letters received from my employers, written and signed by Mr. Henry Pfeiffer, Mr. G. A. Pfeiffer and Mr. G. D. Merner, re-

spectively, which I take pleasure in handing to you for such use as you may deem advisable.

Q27. I ask you to read these letters into the record and following your answer I ask the Examiner to note their introduction as exhibits on behalf of plaintiff and to mark them "Plaintiff's Exhibit, Kelton Correspondence, Letters Nos. 10 to 44 Inclusive."

A. I recognize these as the original letters and read as follows:

(Letter No. 10)

"St. Louis, Dec. 30, 1905.

Mr. Alva Lee Kelton,
Memphis, Tenn.

Friend Kelton:

We enclose check for sample case shipped over the Frisco R. R. Kindly return your old case promptly as we are rather short at this season of the year.

In reference to Memphis statements you have all there are for Memphis at this date.

With kind regards, we are,
Respectfully yours,
PFEIFFER CHEMICAL CO.,
G. D. Merner.

Mr. Kelton:

Am informed that Rose is also in Memphis, so go for your best and most doubtful trade first.
H. P.

(On back of letter)

Mr. H. Pfeiffer,
Dear Sir and Friend:

I will surely take care of the trade in Memphis and all other towns in my territory, if I can keep my health I know no such thing as fearing competition.

Very sincerly,
Alva Lee Kelton."

(Letter No. 11)

"St. Louis, July 5, 1906.

Mr. Alva Lee Kelton,
Jackson, Tenn.

Friend Kelton:

We enclose expense check, notations, etc. You certainly are to be doubly complimented on your record in Memphis. Also, we wish to again compliment you upon the good prices you are getting.

We have gone over your Memphis business from Jan. 1st up to July 5th with the following results:

Total orders shipped amount to 1785.94
List price— 1886.84

The above included mail and personal orders. We feel you are more than going to make the 3000.00 for the year. Would suggest that you raise your mark to $3500 and you will have our confidence that you will reach the goal.

We are depending on you, Mr. Kelton, to keep the P. C. Co. banner on top in not only Memphis, but in the entire state of Tennessee.

Again complimenting you upon the above record, and with best wishes, we are,

Respectfully yours,
PFEIFFER CHEMICAL CO.,
G. D. Merner."

(Letter No. 12)

"Apr. 16, 1907.

Mr. Kelton:

You certainly deserve congratulations on your sales in Memphis. For this reason we have led all our salesmen and it is going to put you near the top for April. Why not make a determined effort to be number one for this month? You certainly have a fine start.

Respectfully,
PFEIFFER CHEMICAL CO.,
G. A. Pfeiffer, Secy."

(Letter No. 13)

"St. Louis, Sep. 12, 1907.

Mr. Alva Lee Kelton,

Friend Kelton:

We have decided to have all you travelers come to St. Louis and we would like to have you arrange your trip to be in St. Louis Thursday morning, Oct. 17th.

We have arranged to have you stop at the Planters Hotel and enclose a letter which please present to them after registering. The St. Louis Transfer Co. runs a bus from the depot at 25c. and it probably will be well for you to take the bus to the Hotel.

The object in having you come to St. Louis is to have you see how nicely we are fixed for business, also to make arrangements to close a contract for next year, and to talk over matters concerning the business that you do not fully understand. We expect you to stay in St. Louis three days and the writer will arrange to give you most of his time while here.

Please commence taking memorandums of every item that you wish to talk about so that we can go into detail and explain them to you fully. We want to put you in position so you can talk our line of goods to the trade knowingly.

Please let us know if it is going to be convenient for you to be here on the above date. Be sure and bring your sample case with you so we can have it thoroughly fixed up for you.

We feel we are in better shape now to give you full information in regard to our business than ever before.

Respectfully yours,
PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest."

Letter.

(Letter No. 14)

"Nov. 9, 1907.

Friend Kelton:

Your special delivery of Nov. 8th received this morning and we are happy to say Bravo! Mr. Kelton. You did splendid. The order is in the shipping room and will be shipped today. Nothing like having a good man to represent the House for they do what they start out for. It just simply proves again, Mr. Kelton, what you can do if you deliberately set your mind on doing it and work for that end.

You can readily see what this means for the future with this man. Please don't forget this when you start another man. You will find that this same theory will also hold good on your collections. Determination and push always wins out.

With best wishes, we are,

Respectfully yours,
PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest."

(Letter No. 15)

"St. Louis, Dec. 4, 1907.

Mr. Alva Lee Kelton,
Decatur, Ala.

Friend Kelton:

Your expense book also letters received. We wrote you to Nashville in regard to the order that you wish to send to your relatives. These are altogether too small to send by freight as the freight would be as large as the orders amount to and we are holding them as we could not allow freight charges on orders of this kind. We would be pleased to send them by express charging whatever the express charges are to your account.

We also note that you are going to be at the Hotel Echols, Decatur, Ala. We do not believe in visits of this kind as we feel it makes extra expense and what we want is orders.

Lay your plans for a good December and to not listen to anybody, but do your duty and put in your time and show your customers what they are losing by not pushing our goods harder than ever. Every dollar's worth of business you are selling now you make besides your salary and expense 10% commission and the larger this commission check is the better we are pleased.

We have not laid off a single employee in the House and do not intend to do so and we are paying them all in cash too. This is too good a country and there is too big a demand for goods for us to quit.

Hoping you are enjoying good health, and with kind regards, we are,

Respectfully yours,
PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest."

(Letter No. 16)

"St. Louis, Jan. 25, 1908.

Mr. Alva Lee Kelton,
Memphis, Tenn.

Friend Kelton:

Enclosed please find statement of your commission account for the year 1907. Please examine the same carefully and if there are any errors please notify us and the same will be corrected.

We are pleased to note that you again drew a nice commission and we hope that the year 1908 will prove still better. You can readily see what it means when you reach your sale limit, for after that every dollar you sell you get your salary and expenses paid and in addition to that 10%. We

feel that Tennessee has great possibilities as you can readily see that if we could get every dealer in the state pushing P. C. Co.'s goods you would draw an immense commission and the more you draw the better we like it. The business is in the state, Brother Kelton, and it takes smooth work to get it. With your acquaintance and with the prompt service and good goods we are giving them, we certainly feel that every year should show a nice increase.

Your business this year increased over last year nearly $500, so set your mark high and we believe you will not fall much short.

With best wishes, we are,

Respectfully yours,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest.

P. S. In looking over your statement we notice that your past due accounts including offsets and items charged to profit and loss amount in 1907 to $2084 compared with the year previous of $1422, so you can see, Brother Kelton, that your increased business has been entirely exhausted by your increased past due accounts. Now, if everything that you have sold had been paid for you would have gotten $208.45 more commission than you are getting. The point we wish to make is to show you the importance of collecting past due accounts, for every time you close one up it means 10% commission for you and it is surprising what one can do with these people when he is on the ground if he presses the matter, and gives them to understand that they have had the goods and sold them and made a profit and that they should pay for them.

As you know, Mr. Kelton, you are right in your best years and we want to see you make a big salary. The more you make the better we like it

and under your contract it is mutual; for if you do the business you get the money.

With best wishes,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest.

You should make $2000. in 1908, try for it for it can be done."

(Letter No. 17)

"Feb. 13, 1908.

Dear Travelers:

We hope you will pardon our not notifying you of the results of the prize mailed you Jan. 17, 1907. On account of the time necessary to decide, we were unable to notify you soon.

As you are aware, we have 32 travelers and there were only five prizes offered, and the only item we figured was the per cent. of increase over orders of the previous year, so it is out of the question for all to receive prizes.

We are certainly very much pleased with the results as 16 travelers show a nice increase on their orders compared with a year ago, while seven show a decrease. Of course only the travelers were taken in consideration that were with us in 1906 and 1907. This accounts for the discrepancy in the total number that we have now.

We are pleased to announce the following winners:

First prize, D. W. Nolin of North Texas. 100.00
Second price, C. E. Whitlock of Southern Iowa 60.00
Third prize, C. J. Thurman of Nebraska.... 40.00
Fourth prize, Alva Lee Kelton of Tennessee. 30.00
Fifth prize, J. F. Comstock of Arkansas.... 20.00

We also wish to make favorable mention of the following travelers who have made satisfactory in-

creases, C. E. Miller of Missouri would have come in for the seventh prize if there had been one, A. N. Harris of Iowa, eighth, Mr. H. L. Roy of Kansas City, Ninth, Mr. T. D. Van Horn of Mississippi, Tenth, Mr. S. H. Searle of Indiana, Eleventh, Mr. L. B. Hardy, Georgia, Twelfth, Mr. L. C. Gill of Texas, Thirteenth, Mr. S. S. Kerns, Iowa, fourteenth, Mr. O. M. Human of Oklahoma, Fifteenth, Mr. E. J. Fe..of California, Sixteenth.

We enclose checks for the amount of the prizes to the prize winners.

With best wishes, we are,

Respectfully yours,

Friend Kelton:

We wish to compliment you as one of the prize winners for 1907. Your average size of increase is $2.70. This is very gratifying, but do not let this fact discourage you towards making an effort for the prize of 1908. The larger the orders, the larger your commission, with the possibility of a prize.

PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest."

(Letter No. 18)

"Feb. 13, 1908.

Dear Travelers:

With this mail you are notified of the results of the prize offer of 1907 with checks to the prize winners. We are so much pleased with the results that we have decided to make the same prize offer for 1908.

The conditions are the same as 1907, namely $250.00 divided into five prizes as follows:

First prize, $100.00 Third prize, $40.00
Second prize 60.00 Fourth prize 30.00
Fifth prize, $20.00

The conditions are that the first prize winner

is to show the largest increase in size of orders over 1907, etc., through the list, but the traveler is supposed to send in something near the same amount of orders as he did the previous year.

We certainly feel that the ones that did not draw a prize this year are the most likely to win a prize in 1908, especially those that have shown a decrease in the size of the order instead of an increase as the orders of 1907 will be taken as a basis to be compared with 1908, do not get discouraged because you failed in winning a prize this year.

We also feel that some of our travelers either forgot or thought there was no use trying for it when the facts are it is, you might say, in the reach of any one of our travelers to get, the first prize. The conditions are equitable, and to show you what a little increase on each other will do towards getting it, Mr. Nowlin, who won first prize, has increased the size of his orders only $4.67 per order. You all know that with the constant increased demand on our goods and the addition of new items all the time, that this does not look like an unreasonable increase, and if any one of our travelers would have added a gallon of Fluid Extract to each of his orders he would have been the prize winner. It shows the little margin of increase that will bring one of the prizes.

Now please do not let this prize offer go by default, but constantly keep in mind on every order that you take and you may be among the lucky ones in the contest for 1908.

On account of the statistics necessary we regret to say that we will not be in a position to give the names of the prize winners on Jan. 1st when the time expires, but we will make every effort to notify you as soon as we can, but reserve the right of delaying the answer until March 1, 1909.

This prize offer is certainly on an equitable

and mutual basis for you can readily see that the more business you do the more commission you draw, so you see come in for your percentage of benefit. 1-2-3 off you are for ten and one-half month race.

Respectfully yours,
PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest.

SPECIAL NOTICE:
Please keep this letter
for future reference."

(Letter No. 19)

"Apr. 7, 1908.

Friend Kelton:

Enclosed we hand you statement for March. We wish to compliment you on this statement. It is very gratifying. You will note for the six years you have been with us that each year has showed an improvement over the previous year. For the month of March you are also at the head of the class as to sales rank.

We feel that this is one of the best monthly reports that we have mailed out.

You will note one item, off-sets and allowances, something we or the travelers do not take into consideration, still during the month of March it amounted to nearly 3% of our business. It just shows how the money gradually slips away from us and the leaks there are that must be stopped up before we get our profits.

You have done splendid and we hope that April will not be far behind.

With best wishes, we are,

Respectfully yours,
PFEIFFER CHEMICAL CO.,
H. Pfeiffer, Prest."

(Letter No. 20)

"St. Louis, Apr. 15, 1908.

Friend Kelton:

Your letters received and the same carefully noted. We are pleased that you and Mr. Richards met and the enemy is yours.

In regard to Harrison's Pharmacy will say that the only plan we can suggest is for you to go there and see if you cannot in some way get his business. You can readily see that if you cannot do anything meeting him face to face it would be very hard for us to try to do anything by corresponding, so put on your thinking cap and land the man if you can.

On your March report 1-A means that you were the leader of all the salesmen. No. 1 is mail orders which of course leads all the men and 1-a is the next and so. You certainly have very just reasons for feeling proud of the March Report, and we hope you will get more of them during the year, which will mean a nice commission check at the end of the year for it is always a pleasure to us to send our travelers a big commission check.

With best wishes, we are,

Respectfully yours,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest."

(Letter No. 21)

"St. Louis, Apr. 30, 1908.

Mr. Alva Lee Kelton,

Nashville, Tenn.

Dear Sir:

Is there a thief in your store?

We do not mean the kind that reaches in your cash drawer and appropriates the contents. There is a worse kind of thief than the one that holds you up with a gun. (We refer to that little thief in

your mind that keeps you from selling profitable goods.)

Add up the sales you make in one day on unprofitable goods. We will warrant that you could have made at least 50% of those sales twice as profitable as they were had you sold your customers the right goods.

Gross sales do not mean anything.

It is profits that count.

Yes, it is easier to sell high priced advertised goods. We know that, and it take a little hard work to introduce a line of profit paying packages, but once you have them introduced, you will have smooth sailing.

The Pfeiffer Chemical Co.'s goods fill your bill.

Just give the enclosed order blank careful study. Write your name at the top and let us ship the goods to be an entering wedge to drive out the little thief.

You are entitled to these profits. Now get them.

Everything we furnish is guaranteed to give satisfaction to the consumer, and besides, pays you from 100% to 300% profit.

Respectfully yours,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest.

P. S. This is a letter that we are sending to every druggist in your territory whether a customer or not, and the postage alone is $800.00. This again proves to you that we are aggressive and use every means possible to help our travelers increase their business and we hope you will work to get the benefit of this expense."

(Letter No. 22)

"Jul. 1, 1908.

Friend Kelton:

So 'everybody' was at Elizabethton for Eagle

Drug Co.'s order. The only way we can figure it out there was but one salesman that got the order. You certainly deserve credit for the nice assortment sold, and the purchaser can recommend these preparations to his customers in the highest terms. They certainly give satisfaction.

Wishing you continued success and with best wishes, we remain,

Respectfully yours,

P. C. Co."

(Letter No. 23)

"St. Louis, Jul. 9, 1908.

Friend Kelton:

Your letters of different dates duly received and the same carefully noted. It will be entirely satisfactory for you to have your usual Summer vacation and we hope you will get the rest desired and come back ready for a big business.

We also want to thank you for your hearty congratulations in the success in securing the management of William R. Warner & Co. We will assure you, Mr. Kelton, that all P. C. Co. men will be well taken care of. We will guard your interests and try and arrange things mutually satisfactory.

With this additional line you will be able to sell dealers goods that you never were able to sell before which will be a big help and in time you will work in your P. C. Co. and Mellier's perfumes and your S & H goods, but with all that it takes good men and we know we have a good man in Tennessee.

Hoping you will enjoy your vacation and with best wishes, and kind regards, we are,

Respectfully yours,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest."

(Letter No. 24)

"Aug. 25, 1908.

Friend Kelton:

Re—Enthusiasm.

We are happy to note from your various letters that your enthusiasm is at high pitch. Enthusiasm, Brother Kelton, is one of the most catching things on earth, it even beats Small-pox and if you can give enthusiasm to your trade their success with P. C. Co.'s goods is assured.

PFEIFFER CHEMICAL CO.,
G. D. Merner, Treas."

(Letter No. 25)

"Philadelphia, September 14, 1908.

Friend Kelton:

Re. Duplicate orders sent us.

These orders are certainly ideal orders for the P. C. Co. In examining them carefully, we note you are a fine combination man and know how to sell Profit Paying Patents, Pharmaceuticals and Mellier's Perfumes and have learned the trick of building up the order so as to justify a direct shipment. We find that the orders amount to over $520.00 and are about as fine a lot of orders as any house can hope to get. Such a record certainly must re-double your enthusiasm on the Combination Line and make you put forth your very best efforts to duplicate it.

With best wishes for continued success, we are,

Respectfully yours,
WM. R. WARNER & CO."

(Letter No. 26)

"Oct. 19, 1908.

Friend Kelton:

Re—Your September Record.

When a salesman ranks 3 in point of sales and

good in point of prices we really feel the report speaks for itself and is in itself the heartiest kind of a congratulation the House can give. The writer enjoys writing letters, but in times like the present (the busiest of the year) the accumulation of work will not permit going into details otherwise indulged in with pleasure. You can rest assured, however, Brother Kelton, you have our best and heartiest congratulations. The record is one you can be proud of and we know will prove only on your part a desire to better it.

Cordially yours,
PFEIFFER CHEMICAL CO.,
G. D. Merner, Treas."

(Letter No. 27)

"Nov. 19, 1908.

Friend Kelton:

October, 1908, shows the largest month's business you have ever had with the House. We are pleased to congratulate you on this increase. We have no doubt it will be put a stepping stone to further breaking of records.

Respectfully yours,
PFEIFFER CHEMICAL CO.,
G. D. Merner, Treas."

(Letter No. 28)

"Philadelphia, Dec. 5, 1908.

Mr. Alva Lee Kelton,
521 Woodland St.,
Nashville, Tenn

Dear Mr. Kelton:

Your letter of December 1st received. It, of course, is a pleasure to the writer to know that you are continuing to make good with the combined lines. It seems you have been with the firm so long that it would be a mistake from every stand-

point for you to consider any other sales position. You know the line, you know the customer, and you know the house. It would take a good long time to become so thoroughly acquainted with a new connection, and no doubt would cause you, as you said to the writer in St. Louis, to sweat some blood.

Pleased to note that your business is showing a nice increase, and convinced that you will not be satisfied with 1909 unless your previous increases hold good, and it proves to be your banner year. We always should, and salesmen in particular, aim to exceed previous efforts. Such results, however, only come from good, faithful, steady work and when one can work with the conviction that he is traveling for the right house, selling the best goods to the best druggists in existence.

With kind regards to Mrs. Kelton, and best wishes for yourself, I remain, as ever,

Very sincerely yours,

G. A. Pfeiffer.

We look for you in Old Phila.
The cradle of Independence during 1909.
G. A. P."

(Letter No. 29)

"Mar. 24, 1909.

Friend Kelton:

The spirit shown in your letter of Mar. 20th is certainly appreciated and we feel we have your co-operation, Brother Kelton, in making the St. Louis House the leader each and every month. You know those Eastern boys are making us look a little to our laurel and if we don't watch out they will give us a close race.

Cordially yours,
PFEIFFER CHEMICAL COMPANY,
G. D. Merner, Vice Pres. & Treas."

(Letter No. 30)

"May 12, 1909.

Friend Kelton:

It was indeed pleasant that you and Mr. Van Horn could spend Sunday together. He also wrote us of the good visit you had together. Also mentioned that you two gave Mr. Young a good portion of P. C. Co. enthusiasm.

Cordially,
PFEIFFER CHEMICAL COMPANY,
G. D. Merner, Vice Pres. & Treas."

(Letter No. 31)

"Does it sell?

Well, here is a sample!

Albany, Ga. 6/12/09.

Pfeiffer Chemical Co.,
St. Louis, Mo.

Gentlemen:

Forward by express or freight, prepaid,
1 GAL. Vogue.
Bill same as July 1st, to
Artesian Drug Co."

When a dealer orders in gallon lots by mail it looks as though it is a winner, doesn't it?

Vogue is a repeater, Summer and Winter, its sales prove it.

Cordially,
PFEIFFER CHEMICAL COMPANY,
G. D. Merner, Vice Pres. Treas.
PFEIFFER CHEMICAL COMPANY,

I have always known that Mellier's Vogue is an excellent repeater. I have a number of very large buyers of this odor—that you know.

June 19, 1909, Alva Lee Kelton."

(Letter No. 32)

"Philadelphia, Jan. 7, 1909.

Friend Kelton:

The writer acknowledges your poem 'THE VALUE OF A SMILE' and can assure you that the value of a smile has never been over-estimated. It usually dulls a sharp edge and helps make life worth living. What would this mass of human being be if none of them would smile. The thought of such condition almost staggers one. It does me, and I know it does you, who have such acute sensibilities. Keep your smile as big as possible for '1909'. The writer assures you that it will help you climb some hills, and over-come many obstacles.

With best wishes, we are,

Respectfully yours,

G. A. PFEIFFER."

(Letter No. 33)

"Jan. 20, 1909.

Friend Kelton:

Re—Your December Business.

This report shows the biggest sales for the seven Decembers you have been with us and we are happy to again congratulate you. We trust your record in December will be repeated each of the twelve months during 1909.

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas."

(Letter No. 34)

"Jul. 2, 1909.

Friend Kelton:

Your letters of different dates received and we are certainly pleased that you are feeling some better, also that you have been elected to the posi-

tion of Chairman of the Reception Committee of the Pharmaceutical Association. It is certainly very gratifying to think that one of our travelers is so honored. If you feel that it would be a good investment it would certainly be well for you to attend that meeting and of course incidentally get in as much good work for the P. C. Co. as you possibly can. Conditions are that none of the members of the firm are in a position to attend, having made arrangements for other work.

You will also no doubt be surprised at the contents of the circular letter. We will assure you, Mr. Kelton, that the P. C. men will be properly taken care of and we certainly feel that this is going to put every one of our travelers in a position to draw a larger salary and that is the kernel of the nut.

With best wishes, we are

Respectfully yours,

PFEIFFER CHEMICAL CO.,

H. Pfeiffer, Prest."

(Letter No. 35)

"Philadelphia, Nov. 12, 1909.

Friend Kelton:

Have received your line by Delmas. Evidently friend Delmas became acquainted with a different part of New York than the writer on his several visits, for frankly, he was very well pleased with New York and with the fresh air and nice wide streets, and the well kept buildings.

There is nothing shoddy about the streets of New York, in fact most everybody, I believe, is agreeably surprised on their first visit.

Hope everything is going nicely with you, and and that Mrs. Kelton and the children are enjoying good health.

With kind regards, I am, as ever

Respectfully yours,

G. A. PFEIFFER."

(Letter No. 36)

"Aug. 20, 1910.

Friend Kelton:

SUBJECT—YOUR ORDER FROM GEO. H. BATTIER.

This certainly was a fine order—four items of one gross each, besides a gallon of Quin-Coco.

Congratulating you, we are,

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas.

Henry, the shipping clerk, also called my attention to it.

G. D. M."

(Letter No. 37)

"Aug. 22, 1910.

Friend Kelton:

Regarding competition in Memphis, we know you are right after business, nursing it carefully and we feel you are holding up your end of it.

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas."

(Letter No. 38)

"SUBJECT—YOUR ORDER #280, EDW. V. SHEELY, VANCE & LAUDERDALE, Memphis, Tenn.

Friend Kelton:

We are pleased to note your landing him for a 5 gallon lot of Glycerole-Thymol Comp. It is indeed a matter of much satisfaction to get a big order after making a test.

Cordially,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas."

(Letter No. 39)

"October 23d, 1911.

Friend Kelton:

Your letter of the 20th taking exception to the writer's criticism on the concession you made Taylor Drug Co., Dyersburg, Tenn., received. It was farthest from the writer's intention to offend you in any way, and the notation was written you just as it would have been written to any other salesman, and even to a brother making the same concession.

Surely you know the writer's friendship for you, and the pleasure he always has in noting your success and good sales. And nothing pleases him better than to see your name on the Star List with the amount of sales representing large figures.

Don't fall into the bad habit of carrying a 'Chip on your shoulder' ready to be offended at an exception taken to one of your transactions.

Now, the writer is going to make a confession to you, namely, that he was always opposed to this five gallon proposition, and if he had had his way it never would have been given the salesmen. To confirm this—with a few exceptions, the Philadelphia Salesmen do not enjoy this privilege.

So naturally, when he saw the order making a concession, in addition to the five gallon proposition, it was like stepping on his most tender corn. If you ever had this experience, you know it most generally causes a yell.

Now, Friend Kelton, don't let anything the house says or does, or the mood of the man writing the letter in any way interfere with your work. Your business is to sell goods and the more of them you sell the better for all concerned.

With best wishes, we remain,

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. A. PFEIFFER."

(Letter No. 40)

"November 23, 1911.

Dear Travelers:

Below we give Photo through our screen analysis of the Composite Salesman, for the month of October:

Pfeiffer	(Mr. Alva L. Kelton)	1385.06
Alfred Wright	(Mr. F. C. Stevenson)	963.29
Warner	(Mr. B. F. Jones)	914.41
S & H	(Mr. C. E. Whitlock)	640.78
Mellier	(Mr. J. W. Wilkins)	509.01
Harter	(Mr. O. M. Human)	224.33
	Total	$4637.88

The above includes only the sales of the salesman for the particular line mentioned, of course, each salesman sold some of all the other lines, but in the line given he leads all other salesmen. To illustrate, Mr. Kelton sold more Pfeiffer goods, Mr. Stevenson, more Alfred Wright goods; Mr. Jones, more Warner goods, than any other salesman.

The combined sales show what one salesman would have sold, had he been the leader in each line of products, and demonstrates the wonderful possibilities with our combination. We do not doubt, but that each salesman mentioned above, could have sold as much of each of the other lines as the leader in that particular line, provided he had given each of the other lines the same attention and effort. The real lesson to learn from the results of the Composite Salesman is, the mistake of neglecting any of our different lines. Such neglect almost always means loss of business. Only when you succeed in selling a good average of each the different lines you represent, will you have become a versatile selling salesman.

We know all our salesmen join with the house

in congratulating each representative who forms part of the October Composite Salesman, and will determine to be part of the Nov. Star Composite Salesman. The month of October shows this Composite Salesman to be composed of six different men; it is possible, and it is very likely to happen, that one salesman will form two or more parts of this Composite Salesman.

With best wishes, we remain,

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner,

Vice Pres. & Treas.

O. K. Nov. 25, 1911.
Alva Lee Kelton."

(Letter No. 41)

"St. Louis, Apr. 9, 1912.

Friend Kelton:

We notice the good work you are doing in behalf of the Tennessee Pharmaceutical Association and are pleased that you can be of efficient service in promoting the interests of the Legitimate retail drug trade.

Cordially yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas."

(Letter No. 42)

"SALESMAN'S LETTER.

What is More Welcome Than Orders?

Dear Traveler:

The answer to the above is 'The large order'. Possibly the greatest weakness of our position is the small order.

For years it has been our constant effort to develop a plan to eliminate the small order, filled at a loss. To confess, that was one of the funda-

mental reasons for our various consolidations, the purpose being to supply such a broad line as to enable you to sell an order which justifies direct shipment, and which returns a fair profit.

The small order has no advantage, and is at a disadvantage, in every respect, compared with the large order. We believe you constantly aim to sell your customers a big order. At the risk of being tiresome, we recapitulate a few suggestions for selling the big order:

First, Time:—

Your plans should be perfected before you enter the store, and you should know whether you have called at a time when you can reasonably expect to hold the buyer's attention.

Second, Demonstrating the Line:

Unless you can do this, your chances of selling a large order are limited. If on the other hand you can properly demonstrate and interest the dealer in the different lines, even though he may buy a small quantity of each, you will leave him with a nice sized order.

Third, Think Big Ideas:

This is absolutely necessary, for you are constantly in touch with dealers whose surroundings handicap them in doing so, and unless you can impress big ideas on your customers, the chances are he will impress small ideas on you. The true salesman controls the situation, the order-taker is controlled by the buyer.

Fourth, Develop your Memory and Know your Business:

This is the best time prolonger known. You can say in two seconds, what it takes you perhaps two minutes or more to look up. Knowing the answer to your buyer's question means you can have a minute and fifty-eight seconds to build up your order.

Waste of time is probably the greatest leak in modern business transactions. If you're weak in not knowing your prices, or weak on the different lines, do not lose an opportunity to overcome your weakness. Absolutely know your lines from A to Z. You cannot find a better lever to build orders.

There are other ways to build orders, and after you have read this letter, take a piece of paper and write out the different schemes for doing so. We assure you of one thing, namely, that the last item you place on the order, is the best part of the order. All expenses attached to an order, are the same whether this item is placed on the order or not, and you really have shown the highest quality of salesmanship when you succeed in inducing a dealer to give you an order for an item after he has quit buying.

You will find another advantage in the increase in your sales, for when you consider you average from two to five orders per day, you can realize what an increase in your sales, a few additional dollars to each other, will make.

The large order merits your constant, careful, conscientious and intelligent thought. Time put in thinking it over is not wasted; it will reap a splendid harvest.

Kindly send us any plan you have found successful in increasing your orders; we would like to give your brother salesman the advantage of it.

Truly yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner, Vice Pres. & Treas.

Recd. June 1, 1912.

Alva Lee Kelton."

(Letter No. 43)

"Aug. 10, 1912.

Mr. E. W. Gladhill,
Dyer, Tenn.

Dear Sir:

Answering yours in references to Rheumatic Comp. sold your customer, Mr. Peter Morecraft, who has no doubt a Chronic case. If Mr. Morecraft feels he has not received his money's worth, we suggest you refund amount paid you. Please find attached credit memorandum as your protection.

We are today writing our Mr. Kelton, to advise you when he will again be in your vicinity. However, as Mr. Kelton receives full credit for mail orders, he, as well as ourselves, will much appreciate your order direct. To assist you, we are mailing under separate cover, copy of our latest catalog, also price lists of the Wm. R. Warner & Co., The Searle & Hereth Co., Mellier's & Alfred Wright's Perfumes. As you, of course, know we are affiliated with these concerns and fill orders for their products in addition to Dr. Harter, Kickapoo & B. B. B. Family Medicines.

You will note that practically every item we supply nets you at least 100% profit, and from then on up to 300% clear. Besides, the quality is such that we give you our authority to guarantee everything you get from us to give entire satisfaction to your customers. We would appreciate your looking over our catalogues, and favoring us with your order, covering your wants in our line. Stamped envelope is enclosed for your reply.

Assuring you of our heartiest co-operation at all times, and with kindest regards.

Cordially yours,
PFEIFFER CHEMICAL COMPANY,
Ben L. Brockman.

O. K. Aug. 17, 1912.
Alva Lee Kelton."

(Letter No. 44)

"SALESMAN'S LETTER.

Suggestion.

Dear Traveler:

Suggestion is undoubtedly the greatest sales weapon, and thousands, in fact, millions of dollars, are spent in making suggestions. Every window display is to suggest; just think of the thousand of dollars the leading stores spend on their window displays, and the only purpose is to suggest a need in the mind of the customer.

All salesmen on the road are for like purpose; —they are sent out to suggest to the buyer something that he needs or can use to advantage. To assist you, we supply you with samples. These offer you a direct means to make your suggestions, and every salesman of experience, who has been a success, fully realizes and appreciates sample value, and instead of groaning under their weight, or objecting to them, he welcomes samples above everything else as a means of increasing his efficiency and sales.

Granting the value of samples, the next point is to keep them in such condition that they will make a favorable impression. Really, it would be too bad, if you are carrying the weight of a lot of samples, and then when you show them to a prospective buyer, they are in such condition that instead of making a favorable impression and suggesting a desire to have those goods in his store, they have just the opposite effect, and you can rest assured, that if your samples are not in good condition, not clean, not well kept, that opposite effect is just the kind of impression they make.

The purpose of this letter is to enlist your cooperation in keeping your sample case up to date,

filled with nice, neat, clean samples, and demonstrating them in such a way as to transfer the favorable impression and suggestion made into an order.

It costs the house money to supply samples, and we do not desire that you be extravagant or wasteful with them, but we realize that the most expensive samples you can have is a dirty one, and one that doesn't create the desired favorable impression. Upon receipt of this letter open up your sample case, look at it and ask yourself, Are they the kind of samples that would make a favorable impression upon me, if I were buyer? Could they be improved so as to make a more favorable impression if the salesman called on me with that case?

Selling goods is your business. You put time and effort calling on your customers. Why not have everything as favorable as possible when you do so, and let us add right here, that your results will depend largely upon the condition of your samples, and the way you demonstrate them.

Proper suggestion is the greatest selling force known. We repeat, it's the best weapon a salesman has, and samples are one of the best methods of making suggestions. Once more, think of the thousands of dollars the leading department stores spend in window displays. What do you see in these windows? Samples. Are they dirty? No. Are they placed in haphazard method? No; on the contrary, they are the nicest, cleanest goods in the store, arranged in the most tasteful and attractive manner possible.

That is just the way your sample case and your samples should be kept. Perhaps you do not appreciate the advantage of your samples and sample case, but if you will stop and give this matter a little thought, their value will be readily ap-

parent. Arrange at once to put them in first class condition, and realize the full advantage of them.

With best wishes, we remain,

Truly yours,

PFEIFFER CHEMICAL COMPANY,

G. D. Merner.

Aug. 10, 1912.

Dear Mr. Merner:

This is, undoubtedly, one of the very best letters you have ever written. I like the correction.

Very sincerely,

ALVA LEE KELTON."

Q28. On the bottom of letter No. 10 I find a note written in long hand, as follows:—

"Am informed that Rose is also in Memphis; so go for your best and most doubtful trade first. H. P."

Please explain who is the "H. P." whose initials are signed to this note, and who is referred to as "Rose"?

A. This is a note written by Mr. Henry Pfeiffer in his own hand, and Rose referred to therein was my competitor, representing the Allen-Pfeiffer Chemical Company.

Q29. On the back of letter No. 10, I find a note signed by you. Please explain what this is?

A. This is a copy of my letter written to Mr. Pfeiffer in response to his note referring to Rose on the bottom of Letter No. 10. I frequently kept copies of my replies to house letters by writing them on the house letters themselves.

Q30. I call your attention to letter No. 36, and ask you to explain, if you remember, what it refers to?

A. It is with much reluctance that I turn letter No. 36 over to you, even temporarily. It is a letter referring to an order which is like an oasis in the life of a

commercial traveller. This order was of such magnitude that even "Henry," the shipping clerk, called Mr. Warner's attention to it. An order for four items of one gross each is hard to get in any place, especially in a city like Memphis, Tenn., and from such a large drug store as the George H. Battier was.

Q31. I notice that Letter No. 41 refers to your work in behalf of the Tennessee Pharmaceutical Association. Will you kindly explain with reference to this?

A. I was at the time Letter No. 41 was written, April 9th, 1912, secretary and treasurer of the Travellers Auxiliary of the Tennessee Pharmaceutical Association. This is the reference Mr. Merner makes in his letter. I had done considerable work in promoting activity and interest in this auxiliary, sending out letters and devising plans to make the work of the auxiliary helpful and effective. I had received complimentary letters from Mr. Eberle, secretary of the Texas Pharmaceutical Association. These I had sent to the house for perusal, and this letter was in response and returning the Eberle correspondence.

Q32. Please state your comparative rank in the list of salesmen employed by the Wm. R. Warner & Co., and what evidence you have to substantiate your reply?

A. The Wm. R. Warner & Co. kept a record of the sales of what they termed the "Star Salesman." Any man whose name appeared on this list was always proud of the fact that he had achieved the pace set by the house for his record. I here produce a number of salesman's letters issued by the house during the years 1911 and 1912, being all that I could find among my old papers, showing these star lists. I find my name included in each of these lists, sometimes in one position and sometimes in another, but frequently near the top, and I feel that these letters justify my claim as producing my share of business for the house, and that the other letters above referred to justify my claim of en-

joying the confidence of the house, as well as their appreciation of my work.

By Mr. Bradford: The letters above referred to are produced and exhibited to counsel for defendant, but not offered as exhibits unless he so desires.

Q33. Were letters ever written to the house by your customers in reference to your work?

A. Very frequently, and I have a number of such letters, which I show you, together with copies of letters from the house transmitting such letters to me, all showing the appreciation of my work by my customers, as well as by my house.

Q34. Do you recall any notably large orders for Quin-Coco while you were selling this item? If so, please relate?

A. Quin-Coco was by far the best seller I had in the entire pharmaceutical line, after I once introduced it to the trade. As stated in a former answer, unless a man could use it in quantities he did not interest me as a buyer. One day in particular which I remember was my sales in Dyersburg, Tenn., on November 13, 1909. My sales for that day, five orders, amounted to 20 gallons, total.

Q35. How large a town is Dyersburg?

A. Dyersburg is about 7,000 population.

Q36. Did you have any difficulty in believing the statement made to you by Mr. Garvin, as before stated in your testimony, that the Pfeiffer Chemical Company was manufacturing a hundred and sixty gallons of Quin-Coco per week, in December, 1909?

A. I feel certain Mr. Garvin was conscientious in his statement to me concerning the amount of Quin-Coco manufactured by the Pfeiffer Chemical Company. I used this as an argument, or, rather, as a proof, to the trade if I accidentally found a man who was not a buyer of Quin-Coco, to show him that we were actually knocking the eye out of Eli Lilly & Co., in their sales of Coco-

Quinine. It seemed entirely reasonable to me, in view of the volume of my own sales, that the house should be manufacturing this quantity, or even more.

Recess until 1.30.

At this point Mr. Kelton's deposition was resumed—Tuesday, August 15th, 1916—at 2.45 P. M.

Mr. Rawle now being present, enters of record the following objections:

To Q26—Because the question is irrelevant and immaterial.

To Q27—The question and the writings offered are objected to as irrelevant, inadmissible and immaterial.

To Q28 to Q31—Same objections.

To Q32 to Q36—Same objections.

Q37. About the middle of February, 1916, I asked you by wire to meet me in Memphis for a conference. We spent a couple of days in Memphis and a day in Nashville, at which time you showed me the larger part of the documents that have been introduced in evidence. You also advised me that you felt that some of your old customers could substantiate the testimony you had given in the case. I asked you if you would during leisure time and at our expense see some of your old customers in the vicinity of Nashville and advise me the results of your interviews with them.

I am asking you this question because I assume that counsel for defendant would like the facts of record and to give him an opportunity to ask any questions on the subject he may care to.

Please explain if you did any work in response to my request and in a general way the result of it?

By Mr. Rawle: Objected to as irrelevant and inadmissible. Defendant's counsel however accepting as a statement of fact the facts known to him and set forth in the question.

A. Pursuant to your request I called upon twenty-five or thirty former customers and found that they remembered very well having purchased Quin-Coco, most of them agreeing that they had been told by me that it could be used as a substitute for Coco-Quinine, and almost invariably they would make a request not to be drawn into the case, not that they could not agree that they had used Quin-Coco in the manner above stated, but that they simply did not care to be mixed up, as they put it, in any controversy.

By Mr. Rawle: I object to the answer for the same reasons and as hearsay and cannot help calling the attention of the Court to the very grave impropriety of eliciting such statements and the placing of them on the record.

Q38. In your sales work for Wm. R. Warner & Co., were the officials of the house fully conversant with your methods of selling goods?

By Mr. Rawle: Objected to as not proper for rebuttal, and as calling for a general statement instead of for facts, or a statement of precisely how such officials became conversant if the witness should testify that they did.

A. I would certainly see no reason why they should not be so, for I tried very hard to conscientiously represent them, in a reputable manner, during all the years I was in their service.

Q39. Are you in any way under any obligation, financial or otherwise, to Eli Lilly & Company, or to any one connected with that house, and has your testimony in this case as given at this time or at any former time, been influenced by any such obligation now existing or then existing, or any promises for any future reward?

By Mr. Rawle: Objected to as inadmissible and irrelevant.

A. I am in no way under any obligation to any one

in any way whatever, connected with Eli Lilly & Co. Concerning my testimony in this case, my friend, Mr. G. W. Madden, the local representative of the Eli Lilly & Co., and who lives in Nashville, my home and his home, is my neighbor and friend. He insisted when I gave my deposition last year several times that I do this for him. Although we had been competitors still we had been friends. I was very reluctant to give any testimony but on account of our friendship I agreed to do so, and did last year. I unhesitatingly state that I have the highest regard for every member connected with both the Wm. R. Warner & Co. and those whom I know in Eli Lilly & Company.

By Mr. Rawle: The answer is further objected to as entirely irresponsive in almost all respects and the irresponsive part is objected to for the same reasons.

Direct examination closed at 3.10 P. M.

Cross-examination (at 3.10)

By Mr. Rawle (without waiver of objections):

XQ40. What compensation have you had for the work you have done for Eli Lilly & Co., in this case (apart from your time spent on the witness stand) and what compensation do you expect or hope, or have you arranged to receive, therefor?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. I have received a reasonable compensation for time I spent and have no hesitancy in stating that I have no idea nor desire for any reward in any manner.

XQ41. XQ40 repeated.

A. As already stated I received a reasonable compensation and when I say that that is all that is necessary.

XQ42. How much compensation have you re-

ceived in money or other thing of value or consideration?

Objection repeated.

A. I have always tried to be reasonable in everything. All that I have ever had up to date is a salary and I never have been and I never shall be dependent upon any individual, corporation or set of individuals for my livelihood. I do not belong to the grafter class. If I had been I certainly would never have taken up the life of a commercial traveler, as I did. Under no circumstances or conditions would I accept anything from any one except in a reasonable manner.

XQ43. XQ42 repeated.

Objection repeated.

A. I repeat the answer above.

By Mr. Bradford: I object to this line of examination unless counsel phrases his questions to discover from the witness whether or not he has been paid or promised compensation in return for giving testimony in this case, or the further fact that he may have been paid or promised an excessive price for his time devoted to the work in order to influence his testimony. It is believed that plaintiff has the right to pay any man a reasonable compensation for the discovery of evidence to be used in this case and I am willing that counsel shall know and to place of record, if he shall insist, the exact price per day and per hour which was paid to the witness for these services. I think, however, that it is immaterial and irrelevant except to determine whether or not it may have been sufficient to unduly influence or bias the witness in his testimony.

By Mr. Rawle: The objection just made is itself objected to as highly improper to be placed on the record, and as leaning rather in the direction of suggestion to the witness.

XQ44. I have asked you what compensation you have received for work done by you for Eli Lilly & Co., in connection with this case (other than for the time you spent on the witness stand before and during the past two days). Do you decline to state the amount of compensation you have received and the nature of it?

A. I see no necessity for a long drawn-out answer to these questions. And I see no reason in divulging any affairs of a personal nature, other than that above stated, namely, that my compensation was simply reasonable, that's all.

XQ45. I now ask you for the last time to state the amount and nature of the compensation you had for work done for plaintiff, in this case, other than the time spent on the witness stand, and I ask whether you decline to answer the question?

Objection repeated.

A. Based upon the salary I had been making I will state that the money I received was none other than that about equalized with what I had been making.

XQ46. How much has the Lilly Company or any person for the Lilly Company actually paid you in fact for the services referred to?

Objection repeated.

A. I do not know the exact amount. I would not under any circumstances make a statement which I could not absolutely verify.

XQ47. State approximately and as near as you can the amount of actual compensation in money that the plaintiff or any one for the plaintiff has paid you for work done for the plaintiff in this case?

Objection repeated.

A. In one time that I was out of the city I found upon my return that the trip actually was made at a

loss on my part, but as I had promised to do a certain thing I simply accepted the amount I had already agreed upon. I would say that altogether I have received very little profit, if any, over what I might have made in my duties connected with my office.

By Mr. Rawle: The witness having steadfastly refused to answer questions touching his compensation for work done for the plaintiff in this case, notice is given of a motion to strike his deposition from the record for that reason.

By Mr. Bradford: The attention of the Court is called to the fact that I have above offered to either furnish counsel for defendant the facts inquired about or place the facts in the record, as he may wish.

By Mr. Rawle: I leave the matter to the discretion and judgment of the opposing counsel.

XQ48. Have you now any expectation or hope of receiving additional compensation from plaintiff or any of its officers or employees, for work that you have done for plaintiff in this case, but which has not yet been paid for? If so, state the amount you hope or expect to receive?

A. I will most positively state that each day I am away from my business is such as cannot be determined in dollars and cents. I am quite certain that no man can tell exactly what time is worth, and time is the material on which I work. I have no hesitancy in stating that the small compensation I may receive at this time will in no manner justify my being away from my business. As to the future I have, as I have already stated, no desire nor inclination in any way whatever to receive any compensation.

XQ49. What I asked you is whether or not you consider that you have been already fully paid by or for the Lilly Company for work done in this case, or whether on the contrary you have done some work for

that company which has not yet been paid for, and if so, how much you expect or hope to receive or expect to ask for?

A. As already stated I have no hope to receive what my actual time would be worth. If so, I certainly would not be here today. I would not under any circumstances receive money which did not merely compensate me for the small time put into it now.

XQ50. Have you been fully paid for what you have done, or do you consider that there is something still coming to you?

A. My compensation has already been accounted for, but it will by no means justify me in the loss of time I am losing from my own business.

XQ51. You say your compensation has been accounted for. I ask you whether it has been paid you?

A. It has.

XQ52. How much has been paid you?

A. As already stated only the small amount agreed upon when I agreed to do any work in this connection.

XQ53. When you previously testified in this case which was in March, 1915, you stated that you were "assistant general manager Phoenix Mutual Life Insurance Company," and that you lived in Nashville. Has that been your business ever since until now?

A. It has up until August 1st, 1916.

XQ54. What happened then?

A. I received a letter from Frederick Stearns & Company asking if I would accept a position as traveling salesman for them. Later we exchanged one or two letters and they wired me asking me to come to Detroit at their expense. I am now in the employ of Frederick Stearns & Co.

XQ55. In what territory?

A. The exact territory has not yet been determined, but I hope to get Texas on account of my wife's declining health.

XQ56. Have you begun actual work for that house?

A. I am at the present time in the employ of Frederick Stearns & Company and have had to wire them the second time on account of my delay in this city.

XQ57. Have you sold any drugs for Frederick Stearns & Co.

A. My first week's sales went in Saturday night of last week. At this very hour I should be representing them.

XQ58. When did you first begin to put in any of your time in helping plaintiff prepare the testimony in this case?

A. I believe it was in February of this year.

XQ59. When did you complete your labors for plaintiff?

A. I have forgotten the exact date, but it has been possibly sixty days ago. However, I put in days at odd times between February and the time stated.

XQ60. In what cities, towns or villages did you call upon your former druggist customers to interview them about testifying for plaintiff in this case?

A. I was in Memphis with Mr. Bradford in February, and later made some towns contiguous to Nashville, covering as above stated, some twenty-five or thirty druggists in all, I presume.

XQ61. Name the towns or cities, other than Nashville.

A. I was in Clarksville, Springfield, Murfreesboro, and a few other towns.

XQ62. What other towns or cities?

A. I was in Gallatin and Franklin, both being nearby towns.

XQ63. Name the others?

A. I made one trip in which I was in Union City, Martin, and Paris, and a few smaller towns.

XQ64. What other towns or cities?

A. Near Union City I was in one day in Rives, Kenton, Rutherford, Trenton and Dyer. As near as I now recall this covers the entire list of towns where I saw any customers.

XQ65. In the insurance business what was the particular nature of your duties in connection with the company?

A. I was a solicitor of business and also assisted the manager in the duties of the office.

XQ66. Were you paid commissions for insurance business brought to the company, or did you get a salary or both?

A. I received both.

XQ67. Did Madden visit any of the old customers with you?

A. He did not.

XQ68. Have you discussed with Madden or any other person connected with plaintiff the subject of obtaining employment as a drug salesman for the Lilly Company?

A. Positively no.

XQ69. Referring to the list of your sales of Quin-Coco which you have produced, I understand that you found a number of duplicate orders turned in to the company and that then at the request of plaintiff you copied these into your book, which book you produced and that the list as read off by you is a reproduction, perhaps in changed order, of the list copied into the book. Is that correct?

A. That is correct.

XQ70. I have asked you several times to state the amount of compensation you have received or expect to receive from the plaintiff for work done for it on this case. I now ask you again to state what compensation you have received or expect to receive?

By Mr. Bradford: Objected to as immaterial and irrelevant, but since counsel seems so insist-

ent on obtaining this information, counsel for plaintiff states that his agreement with the witness was that he should be paid $10 for each day he spent making the trips outside of Nashville and his actual expenses and that he promised him a compensation of $1 per hour for the number of hours necessary to go through his mass of old papers, select therefrom such duplicate orders as he could find and make up the list, heretofore referred to. He did this after some investigation in the full belief that he was only paying witness a fair remuneration for the time required, based upon his usual earnings. No other compensation of any name or nature past, present or future has been promised to the witness to counsel's knowledge on behalf of plaintiff.

A. The objection states the matter in full.

Cross-examination closed at 4.25.

Re-direct-examination.

By Mr. Bradford:

RDQ71. Have you received or been promised on behalf of plaintiff any compensation of any name or nature other than as above stated?

A. None whatever.

Deposition closed.

Alva Lee Kelton.

Adjourned to meet at St. Anthony Hotel, San Antonio, Texas, at 10 A. M., August 17th, 1916.

Mobile, Ala., Aug. 14, 1916.
Battle House, 11 P. M.
Mobile, Ala.

Met pursuant to adjournment from New Orleans, La.

Parties present as before.

LARKIN E. EDMONDSON, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Larkin E. Edmondson, age 27, Mobile, Ala.; retail druggist. I am a stockholder in the Burkett Drug Company, Inc., and manager of one of the stores.

Q2. Do you know Mr. B. F. Jones, a traveling salesman for Wm. R. Warner & Co., and if you do, how long have you known him?

A. Yes, sir, I do. I have known him about three years.

Q3. Has he solicited your orders for goods in his line?

A. He has.

Q4. Among other items has he solicited your order for Quin-Coco?

A. He has.

Q5. In soliciting your order for Quin-Coco what did Mr. Jones say to you respecting this item?

By MR. RAWLE: Objected to as not proper for rebuttal.

A. He said that it was a chocolate quinine that

could be sold and dispensed in place of Coco-Quinine; that it was the same kind of preparation.

Q6. Did he say it was the same thing as Coco-Quinine?

By Mr. Rawle: Same objection and as leading.

A. He said it could be used for the same purpose as Coco-Quinine.

Q7. Did he mention Coco-Quinine, Lilly, in his talk respecting this item, and make a direct comparison with this Lilly preparation?

A. He mentioned Coco-Quinine but he did not make any comparison that I know of.

Q8. What do you mean by did not make any comparison?

Objected to as not rebuttal and because the answer is clear without any explanation.

A. Well, he did not compare the consistency of the syrup or any other line of comparison that I know of.

Q9. How did he introduce the subject at this interview?

Same objection.

A. I can't remember how he introduced Quin-Coco the first time it has been such a long time ago. It has been about three years since I first bought Quin-Coco from him.

Q10. Has he solicited your order for it more than once and if so did he use the same argument each time?

Objected to as not rebuttal and as leading.

A. He always asked me every time he made a trip if I wanted any Quin-Coco or chocolate quinine as he called it. It was not necessary for him to make an argument each time. He merely asked me if I wanted any and I told him yes or no as the case was.

Q11. When was the last time you saw Mr. Jones?
A. About sixty days and may be longer.

Direct-examination closed.

No cross-examination.

LARKIN E. EDMONDSON.

New Orleans, La.
August 15th, 1916.

After recess, 1.30 P. M.

Parties present as before recess.

It is agreed by counsel that further examination of witness Kelton may be suspended to accommodate other witnesses desirous of leaving the city on afternoon train and that these depositions may be inserted to follow the deposition of witness Edmondson.

JOHN MOISE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. John J. Moise, age 22; Napoleonville, La.; clerk in the Imperial Drug Store, Napoleonville, La., Charles Heno, proprietor.

Q2. Have you any knowledge of the purchasing of the goods for the store where you are employed?

A. Yes, sir; I am frequently present and participate with Mr. Heno in making purchases.

Q3. Do you know Mr. B. F. Jones, a traveling salesman for Wm. R. Warner & Co.

A. I do.

Q4. Have you ever been present at any interview between Mr. Jones and Mr. Heno when Mr. Jones was soliciting an order for the Warner goods?

A. Yes, sir.

Q5. Have you ever heard Mr. Jones solicit Mr. Heno's order for an item called Quin-Coco?

A. No, sir.

Q6. Have you ever heard any other representative of Wm. R. Warner & Co. solicit Mr. Heno's order for the item Quin-Coco, and if so, whom?

A. Yes, sir; Mr. Ritayik.

Q7. When was this?

A. It was about a year ago. It was about a year ago, I could not say just exactly when.

Q8. Were there any circumstances connected with this interview whereby you can fix the date?

A. No, sir.

XQ9. Could you say that it was not more than a year ago, say a year and a half ago?

A. No, sir; I could not.

Q10. Might it not have been as much as a year and half ago?

A. No, sir; it was about the time when the Internal Revenue stamps came out, just about when the bill had been passed.

Q11. You mean the bill requiring internal revenue stamps to be pasted on patent medicines?

A. Yes, sir; on toilet articles and soap.

Q12. Was any one with Mr. Ritayik on this visit?

A. Yes, sir; Mr. Jones.

Q13. Did Mr. Jones have anything to say at the interview?

By Mr. Rawle: The question and all the previous questions leading up to it are objected to as not proper for rebuttal the same obviously

forming part of plaintiff's prima facie case and having been fully gone into there.

A. The only thing he said was that it was right, backing Mr. Ritayik.

Q14. What did Mr. Ritayik say to Mr. Heno respecting this item Quin-Coco?

Same objections and because Heno has already been examined as a witness for plaintiff on the prima facie case, Plaintiff's Rec., 319.

A. He said—he wanted to know if he wanted to buy Coco-Quinine, that is, Quin-Coco, and that everybody along the road where he had been were using it when the doctors prescribed Coco-Quinine and they could not tell the difference.

By Mr. Bradford: It is here noted that the witness, on having his last answer read to him, attempted to correct it, and that counsel for defendant interrupted and insists that the answer must stand as read. Protest is made against this practice by counsel for defendant, as entirely beyond his right and indulging in a practice that is neither proper or in accordance with the rules of evidence. The witness having made an error is clearly entitled to correct it if he sees fit.

By Mr. Rawle: The answer was taken down by the Examiner as spoken and the Examiner so understands. Defendant's counsel has no objection to witness correcting his answer in a proper way by the asking of another question. Defendant's counsel is entitled to have taken down exactly what is said, and no harm is done the witness if he has an opportunity to explain if he made an error. The reason for defendant's counsel taking this position which he does not usually take in this case seems perfectly obvious and proper.

Q15. With what words did Mr. Ritayik introduce the subject of Quin-Coco in his talk to Mr. Heno?

Same objections.

A. He said that he had Quin-Coco which the druggists were using all over on their prescriptions for Coco-Quinine, and you could not detect the difference.

Q16. Did he say anything about the price?

A. I don't remember. But it was cheaper than Coco-Quinine.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 1.35, without waiver of objections):

XQ17. Were both you and Mr. Heno present when Ritayik talked about Quin-Coco?

A. Yes, sir.

XQ18. Were you present during the entire time he talked about it?

A. Not the whole time.

XQ19. Did he say that Quin-Coco was just like Coco-Quinine, or was the same thing and that it was cheaper?

A. He said it is the same thing and everybody was using it and that it was cheaper.

XQ20. And that is about the substance of what he said?

A. Yes, sir.

XQ21. How do you remember the name of the Warner salesman who talked?

A. Well, when I came in today I met Mr. Bynum, and I did not remember his name. So I asked him. But at the time of the transaction I was introduced to him.

XQ22. Is Mr. Bynum the Eli Lilly & Co. salesman for Louisiana?

A. I could not tell you sir.

XQ23. Do you understand that he is in the employ of Eli Lilly & Co.?

A. Yes, sir.

XQ24. And he told you today the name of the Warner salesman was Ritayik?

A. That is, when I asked him; yes, sir.

XQ25. Who asked you to come here to testify?

A. Mr. Lyle, of Eli Lilly & Co., asked me, and Mr. Bynum rang me up on the telephone.

XQ26. How far is Napoleonville from New Orleans?

A. About eighty miles.

XQ27. Were you in Napoleonville during the month of April, 1915?

A. Yes, sir; in the employ of Mr. Heno.

XQ28. How close were you standing to Heno and Ritayik when they were talking about Quin-Coco?

A. While I was there I was leaning on the same counter that the sample was on, and they were there, too.

XQ29. Did not Ritayik say that the doctors were using Quin-Coco all over in their prescriptions in place of Coco-Quinine?

A. No, sir.

XQ30. Had that drug store been carrying Quin-Coco in stock before that?

A. It never has had it since I have been there. That has been three years that I have been there.

XQ31. Before you came here did you talk to Mr. Heno about what was said at that interview? By Ritayik?

A. No, sir; because he did not remember the name of the man.

XQ32. Did you talk with Mr. Heno about what that Warner salesman had said at that interview though he did not remember his name?

A. The only thing I asked Mr. Heno was what was his name.

XQ33. Did Ritayik say to Mr. Heno that they had been selling Quin-Coco to take the place of Coco-Quinine?

A. He did not say it that way. He said the druggists were using it for the same thing.

XQ34. That is to take the place of Coco-Quinine?

A. I did not say that.

XQ35. How long did you stand at the counter and listen to the talk between these three men?

A. I stood there all the time he was trying to sell the quinine preparation.

XQ36. How many minutes was that?

A. I could not say.

XQ37. Was it ten minutes?

A. I don't know how long it was.

XQ38. You can't remember at all how long it was?

A. He talked for a long time; I could not tell you exactly how long.

XQ39. Did you stand there while he talked about other Warner items?

A. Some.

XQ40. Which ones?

A. At that same time Mr. Heno bought some pills and Mr. Ritayik spoke of how cheap he could make essence of pepsin. He said he could make it a whole lot cheaper than buying it. He said he knew, because he was right out of the laboratories.

XQ41. What kind of pills?

A. It is a pill with the same formula as lapactic pills.

XQ42. Was Heno carrying lapactic pills at that time?

A. Yes, sir.

XQ43. And he bought some of the Warner pills that were just like them?

A. Yes, sir.

XQ44. Did Ritayik say that the Warner pill was just like the lapactic pill of Sharp & Dohme?

A. No, sir.

XQ45. What did he say about the Warner pill in relation to the lapactic pills?

A. I don't remember.

XQ46. Did not he say it was just like the lapactic pill, therapeutically?

A. Therapeutically; yes.

XQ47. And you understood him to say that Quin-Coco was just like Coco-Quinine, therapeutically, did you not?

A. Yes, sir.

XQ48. Did you understand him to say that the druggists all over were dishonest and were using Quin-Coco in prescriptions calling for Coco-Quinine? Or substantially that?

A. No, sir; he did not say they were dishonest. He said they were using it for that.

XQ49. Would you say they were dishonest if they used the one for the other on prescriptions?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. Yes, sir; I think so. That is, if the doctor called for Coco-Quinine.

XQ50. Then it is pretty clear to me that you understood him to be accusing the druggists all over of being dishonest. Is that correct?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. That is what I understood him to say.

XQ51. At the time of that interview, how long had you been in the employ of Heno, or in the drug business? Anywhere?

A. About two years.

XQ52. I understand that you are not yet a registered druggist?

A. No, sir.

XQ53. What were your duties in the drug store at that time?

A. Just clerk.

XQ54. You did not put up prescriptions?

A. No, sir.

XQ55. Nor yet?

A. No, sir.

XQ56. Just keep books and wait on the store in selling articles that were not drugs?

A. I don't keep books; selling articles that are not drugs, such as patent medicines, tooth brushes, soda water, etc.

Cross-examination closed at 2.15 P. M.

Re-direct-examination.

By Mr. Bradford:

RDQ57. Can you describe the personal appearance of this salesman whom you have referred to as Ritayik?

A. Yes, sir. He weighed about a 140 to 160 pounds, and was thin faced. He was a little taller than I am, and I am about five feet four. Smooth face. A rapid talker.

RDQ58. Did you hear Jones introduce him at the time?

A. Yes, sir.

RDQ59. When Mr. Bynum gave you his name today did you recall clearly that this is the name by which he was introduced by Mr. Jones?

A. Yes, sir.

RDQ60. You spoke of the date being about the time of the passage of the bill requiring revenue stamps on perfumeries, soaps, etc. How is this fixed in your mind?

A. We had an argument about it, and I showed it to him in one of the drug journals, in the Ruby drug store, back of the prescription counter. I went up there to borrow some stuff from Dr. Duffel and we had an argument, and I went and got the Journal at the Imperial Drug Store.

RDQ61. Has Ritayik ever called at the store more than one time since you have been there?

A. No, sir.

RDQ62. Do you remember the exact date when you entered the employ of Mr. Heno?

A. On the 31st of August, 1913.

RDQ63. Do you remember that Mr. Heno came up here some time last year to testify in this case?

A. Yes, sir.

RDQ64. Was Mr. Ritayik's call before Mr. Heno came to testify?

A. Yes. sir.

Deposition closed.

By Mr. Rawle: Notice of motion to strike out for reasons given.

John Moise.

San Antonio, Texas,
St. Anthony Hotel,
August 17, 1916—10 A. M.

Met pursuant to adjournment.

Parties present as before.

Jeptha C. White, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. Jeptha C. White; age 28; Kingsbury, Texas; retail druggist. Kingsbury is 45 miles from San Antonio, Texas, and has a population of about 300, and has one drug store and two doctors. I have been in the

retail drug business a little over five years, at Kingsbury. I am now the proprietor of the store and run it as J. C. White Drug Store. I formerly had a partner, and it was then run as the Kingsbury Drug Store.

Q2. Do you know Mr. Howard H. Richards, a traveling salesman for Wm. R. Warner & Co.?

A. Yes, sir.

Q3. Has Mr. Richards solicitedyour order for Warner products?

A. Yes, sir.

Q4. How long has Mr. Richards been calling on you for orders in the Warner line?

A. I suppose two and a half or possibly three years.

Q5. Has Mr. Richards at any of his calls solicited an order for Quin-Coco, and if so, what did he say about this preparation?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject having been fully gone into in plaintiff's prima facie case and necessarily forming a part thereof under the pleadings.

A. Yes, sir; he has solicited orders for it. He comes in and goes through his catalogue where he has the pharmaceutical preparations listed, and he comes to the product called Quin-Coco, and he asks me how much Quin-Coco and Coco-Quinine do I need. He tells me that Quin-Coco and Coco-Quinine are the same product, and that he can sell me Quin-Coco at $3.25 or $3.50 a gallon, I don't remember which, where Coco-Quinine costs me $5. He asks me how much I can use.

Q6. Does he say anything about how you can dispense it, and if so, what does he say on this subject?

By Mr. Rawle: Same objection and as leading.

A. Well, he tells me that it is the same preparation as Coco-Quinine.

Q7. Do you ever have any prescriptions for Quin-Coco?

Objected to as not rebuttal.

A. No, sir.

Q8. Do you ever have any calls for Quin-Coco?

Same objection.

A. No, sir.

Q9. Has Mr. Richards ever told you on what kind of calls and on what kind of prescriptions you could sell Quin-Coco, and if so, what did he say?

By Mr. Rawle: Same objection and as leading. The witness has already been asked what Richards said and has answered the question.

A. No, sir. He never did tell me on what kind of prescriptions I could sell Quin-Coco. He, on his representations that Quin-Coco was the same product as Coco-Quinine, I have used it on prescriptions calling for Coco-Quinine.

By Mr. Rawle: The last part of the answer is objected to as not responsive, and because the act of the witness does not bind the defendant, and his statement is immaterial.

Q10. Did Mr. Richards ever ask you if you had any calls for Quin-Coco?

By Mr. Rawle: Objected to as not rebuttal and as leading.

A. No, sir.

Q11. Did he ever ask you if you had any demand or calls for Coco-Quinine?

Same objections.

A. No, sir; not that I remember of.

Q12. When did Mr. Richards first interview you on the subject of Quin-Coco?

A. If I remember correctly it was in February, 1916, and it was the only Quin-Coco I ever bought.

Q13. And that was the time Mr. Richards told you it was the same thing as Coco-Quinine?

Same objections.

A. Yes, sir.

Q14. Have you seen Mr. Richards since?

A. I don't remember if he has called on me since February or not.

Q15. Have you seen him at any other time when he has not been calling on you?

A. No, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 10 A. M., without waiver of objections):

XQ16. I understand you to say, in answer to Q12, that the first time Richards interviewed you on the subject of Quin-Coco was last February, and that you don't remember whether he has called on you since? Is that correct?

A. Yes, sir.

XQ17. What other Warner salesman was with Mr. Richards at that February interview?

A. I don't remember any one being with him.

XQ18. Do you not remember that a Warner salesman named Ritayik was with him?

A. No, sir.

XQ19. Where did the interview take place, and in what part of your store?

A. Well, I suppose, it took place in the front; that is, I generally meet the salesmen in the front. When we get down to the pharmaceutical line we go back behind the prescription counter, where these preparations are kept on the shelves.

XQ20. Had you at that time a practicing physician who was in any way connected with your business?

A. No, sir.

XQ21. Had you previously had?

A. Well, I disremember now, at what time I bought out my partner. It was about two and a half years ago.

XQ22. Was your partner a practicing physician?

A. Yes, sir.

XQ23. At the February interview, was that practicing physician present?

A. I don't think so. If he was he was not connected with the buying of the preparation at all. He may have been in the store. I don't remember.

XQ24. Can not you remember that when Richards came in he was accompanied by another man?

A. No, sir.

XQ25. What is the name of the doctor who used to be interested in the drug store?

A. E. A. Benbow.

XQ26. How long did the interview in February last?

A. I could not say exactly, but I would imagine may be the whole time occupied in the interview was thirty minutes, possibly a little bit longer, may be not so much.

XQ27. Did the salesman go over his entire line with you?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. Yes, sir.

XQ28. And you bought a fairly large order from him? Consisting of perhaps fifteen or twenty items?

A. I think the order amounted to something like $50; I don't remember.

XQ29. Did you at that time buy any of Hobson's Chocolate Quinine?

By Mr. Bradford: Same objection.

A. No, sir.

XQ30. Do you carry in stock other preparations of which you have products of two or more drug houses, which are therapeutically the same, and which, therapeutically speaking, could be used one for the other?

By Mr. Bradford: Objected to as not cross-examination, as an attempt by counsel to make witness his own, and as improper, immaterial and irrelevant.

A. Yes, sir.

XQ31. Approximately how many such preparations do you carry in stock? Ten or fifty?

Objection repeated.

A. No, sir; I don't suppose I have over possibly half a dozen preparations that might be termed therapeutically the same.

XQ32. Please name them?

Objection repeated.

A. One of them might be a preparation that Lilly puts out as Elixir of Alkali and Antiseptic. I think that is practically the same thing as Park Davis preparation called Borol. Then there is another preparation called Listerine. I believe it is the Lambeth Chemical Co. that puts that up. I am not certain. I carry in stock Euthymol, P. D. preparation, and I believe that Warner's preparation is Thy-Menthol. I believe that is it. I have some of it in stock. I don't remember the exact name. These preparations have been represented to me to be the same thing pharmaceutically.

XQ33. How about a cascara preparation?

Objection repeated.

A. I don't think I have anything in stock except Cascara Sagrada Aromatic. All the houses make that preparation. I have two or three of them. Warner's, I have theirs. S. & D. and I think I have Lilly's. I would not be certain.

XQ34. How about pepsin preparations?

Objection repeated.

A. Lilly's Elixir Lactated, I have that. Mulford's Elixir Lactated preparation. I don't remember if I have any of Warner's or not.

XQ35. How about iron, quinine and strychnine preparations?

By Mr. Bradford: Same objections.

A. I have that in both Lilly's and Warner's.

XQ36. How about Aloin, Belladonna and strychnine?

Same objection.

A. I have that in the pill form, A. S. B. & I., under the S. & H. label, sold by Warner & Co., the same formula of Sharp & Dohme's lapactic pills.

XQ37. How about aletris compounds?

Same objection.

A. If I remember correctly I only have that in Park-Davis.

XQ38. Have you had calls for any chocolate quinine preparation under that name or any other name indicating a mixture of chocolate or cocoa and quinine?

A. Yes, sir. I don't remember if I ever had a call specifying any certain one.

XQ39. Have you ever had calls over the counter for "chocolate quinine"?

A. Yes, sir.

XQ40. Have you had calls for "sweet quinine," or "syrup of quinine"?

A. I don't remember ever having a call for "sweet quinine," but think I have had a call for "syrup of quinine."

XQ41. Have you had calls for quinine where the customer gave you to understand that he wanted it mixed in some way that would disguise the bitter taste?

By Mr. Bradford: Objection repeated.

A. Yes, sir.

XQ42. In answer to Q5 you said that when Richards goes through his catalogue and comes to the Quin-Coco item he asks, "how much Quin-Coco or Coco-Quinine do I need." In your answer to XQ16 you said that the first time Richards interviewed you on the subject of Quin-Coco was last February, and that you did not remember seeing him since? Do you wish your last statement, which is to the effect that the first time Richards interviewed you on the subject of Quin-Coco was last February, to stand as your evidence?

A. I think I intended to say that if I remembered correctly, it was February when he first interviewed me on it.

XQ43. With what Lilly salesman or other employee have you talked about this present case of Lilly & Co. against Warner & Co., and when?

A. Mr. Fred A. Burns, the San Antonio representative of Eli Lilly & Co. I don't remember when it was; he was with the San Antonio's drug company's salesman, Mr. Dorsey, I think it was about four weeks ago, as well as I can remember. It may have been a little longer, or a little less. This was at my store.

XQ44. Is that the only time Mr. Burns ever talked to you about this case?

A. Yes, except this morning, after my arrival. He met me at the San Antonio depot this morning and brought me to the St. Anthony Hotel.

XQ45. Since March 1st, 1915, had Burns called at your store on any other occasion than the one mentioned?

By Mr. Bradford: Objected to as immaterial and irrrelevant.

A. Yes, sir; I think so. He generally makes that territory about every sixty or ninety days.

XQ46. On any of these calls did he talk to you about this case? Or about your buying Quin-Coco?

A. Not that I remember of; no, sir.

XQ47. How long have you known Richards?

A. Possibly two and a half years; I don't remember. I think it was two and a half years ago he commenced calling on me.

XQ48. Has he been calling on you during that time, three or four times a year?

A. I think the first year or two he only came about twice a year. Since then he has been coming a little more often, possibly three times a year may be.

XQ49. Have you been buying some of his line?

By Mr. Bradford: Objected to as immaterial and irrrelevant.

A. Yes, sir; I think I have given him an order every time he came, if I remember aright.

XQ50. Have you considered him a square salesman?

Same objection.

A. Honest in his dealings, do you mean?

XQ51. Yes.

Same objections.

A. Yes.

Cross-examination closed at 11.05.

Re-direct-examination.

By Mr. Bradford:

RDQ52. By what name do the prescriptions received at your store call for a mixture containing syrup of quinine and chocolate or cocoa?

By Mr. Rawle: Objected to as not rebuttal.

A. Generally they come in "Coco-Quinine." I have had prescriptions came in for "syrup of cinchona alkaloid."

RDQ53. What does such a prescription call for?

Same objection.

A. Syrup of Cinchona Alkaloid is a preparation put up by Park-Davis. That is a white preparation and does not resemble Coco-Quinine in appearance.

RDQ54. By what name do your customers ask for a chocolate quinine preparation in calling for it over the counter?

A. Some call for chocolate quinine, some for Coco-Quinine, but I never had one specify any certain pharmaceutical house's preparation.

RDQ55. About what proportion ask for Coco-Quinine, and what proportion ask for chocolate quinine?

A. I should imagine that the majority called for Coco-Quinine.

Deposition closed.

J. C. White.

REGINALD V. PERINE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD (at 11.10 A. M.):

Q1. Please state your name, age, residence and occupation?

A. Reginald V. Perine; age 34; San Antonio, Texas; traveling salesman for H. K. Mulford & Co.

Q2. Do you appear here as a willing witness or in response to a subpoena?

A. In response to a subpoena served on me this morning. I have steadfastly refused to be called as a witness all the time, when requested by Mr. Burns.

Q3. Were you formerly employed by Wm. R. Warner & Co., and if so, when and in what capacity?

A. For approximately two and a half years prior to October, 1908, I was a traveling salesman for them; also as State sales manager the latter part of the time for Texas and Oklahoma.

Q4. You were in the employ of the Wm. R. Warner & Co. when it was bought by the Pfeiffer Chemical Company?

A. I was.

Q5. After the purchase of the Wm. R. Warner & Co. by the Pfeiffer Chemical Company, did you receive any instructions from the house indicating their business policy in any way at variance with the policy that had prevailed prior to that time? If so, please explain.

A. Yes, there was nearly an entirely reorganization, both in selling policy and in methods. I had instructions not only direct from the home office, but from a special representative by name Nowlin, who traveled with me between one and two weeks. One thing that I particularly remember that impressed me disagreeably at the time was that formerly as we prepaid freight on shipments of $15 or over, and it had always been my

custom on order blanks to fill in the space following the "ship via" with "freight prepaid," the new instructions under the new management were to the effect that I should simply mark it "by freight." It was explained that by so doing the shipment would be made freight charges collect, and therefore should the customer fail to notice that he had to pay the freight and preserve his freight receipt, the house would be in to the amount of this freight expense. But if the customer called for it, it would, of course, be allowed as promised.

In other words, while I sold the goods delivered, this method would possibly obviate the necessity of paying the freight. This particular instruction was given me personally by one of the Mr. Pfeiffer's, who was an officer of the company. As this was entirely at variance with the former management's policy it made a very unfavorable impression upon me, for it was obviously giving the customer less than promised.

Q6. Did any one representing the company over have anything to say to you about a preparation called Quin-Coco, and if so, what was said and by whom?

By Mr. Rawle: Mr. Rawle having gone to his room in the hotel to get some papers, finds that the examination has proceeded without him. He objects to the last question and the answer as not proper for rebuttal and as irrelevant and immaterial. He objects to Q6 as not rebuttal and as inadmissible, unless proper authority from defendant is shown.

By Mr. Bradford: It is noted that when Mr. Rawle retired from the room, the examination of the witness had begun, and he did not request either to be excused or that the examination be suspended.

A. Yes, Mr. Nowlin was one, who told me to add this item to the replacer list I carried.

Q7. What do you mean by the replacer list?

Same objections.

A. A list of products manufactured by the Warner Company that would replace special preparations manufactured by other companies.

Q8. What did Mr. Nowlin say about this particular item, Quin-Coco?

Same objection.

A. He said that Quin-Coco would replace the product known as Coco-Quinine.

Q9. Manufactured by whom?

A. Manufactured by Eli Lilly & Co. I don't know whether Mr. Nowlin mentioned the name of the manufacturer, but I knew who it was manufactured by and he knew that I had that information.

Q10. Did you add the Quin-Coco to the replacer list, and if so, how was it done?

Same objections.

A. Yes, by simply putting the name of one preparation under the first heading, Coco-Quinine, and the other preparation, Quin-Coco, under the second heading.

Direct-examination closed at 11.35.

Cross-examination.

By Mr. Rawle (at 11.35, without waiver of objections):

XQ11. How often has Mr. Burns talked to you about your testifying in this case, and when?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. I am not able to speak positively, as I don't remember, but my recollection is that it was several times, the first several months ago.

XQ12. Where?

Same objection.

A. The first time at the San Antonio Drug Co. store in San Antonio.

XQ13. How often since?

Same objection.

A. I do not remember; possibly three, or possibly as many as half a dozen times.

XQ14. I understand that you were in July, 1908, and had been for some time a Warner salesman, and that when the Pfeiffers took over the Warner business you continued for a short time to sell the Warner line and that you separated from the Warner Company in September, 1908, and that in the meantime, you had not taken on a Pfeiffer line. Are those statements correct?

By Mr. Bradford: Objected to as unwarranted from any statements by witness on direct-examination; therefore not cross-examination.

A. As to the Pfeiffer line, that is correct, but not as to the Searle & Hereth line. I sold the Searle & Hereth line, in addition to the Warner line. That was given me, but not the Pfeiffer line, from the time the Pfeiffer people took over the Warner line until the first of October, when I severed my connection with them. My salary was paid to the first of October.

XQ15. When you left the Warner employ did you have any grievance against the company?

A. None whatever. Mr. Pfeiffer himself personally arranged this with me, taking over the Warner property that was in my possession.

XQ16. Taking the items of the Warner line, were not a great many of them in competition with similar items of other preparations and drugs on the market?

By Mr. Bradford: Objected to as not cross-examination, as immaterial and irrelevant and improper.

A. Why, the only competition was that they could be used in replacing them, if you refer to the items on the replacer list, when used on prescriptions.

XQ17. How about how many items were there on the Warner list? I mean the entire list.

Objection repeated.

A. Do I understand you to mean the entire Warner catalogue?

XQ18. That is what I mean?

Same objection.

A. I do not know positively, but I estimate at about three thousand. The former general sales manager used this amount in a circular letter at one time in referring to the list.

XQ19. And were not all or most of those Warner items in competition with similar items of other wholesale drug houses?

Same objection.

A. The great majority were.

XQ20. When was that interview with Nowlin? You will remember that you left the Warner employ on or before October 1st, 1908.

A. I can not state the definite time. It was during the week or ten days he spent with me.

XQ21. Was it in September?

A. I think not. My recollection of it is it was just about a month, possibly a little less, after the Pfeiffer Company took over the Warner concern.

XQ22. Did you refuse to take over the Pfeiffer line?

By Mr. Bradford: Objected to as immaterial.

A. It was not offered to me in the territory I occupied. I could not therefore neither refuse nor accept.

XQ23. Did you not inform the Warner Company that you were dissatisfied, because you were no longer to have the Texas territory, but were to be transferred to some other part of the country?

Objection repeated.

A. Yes; I would not entertain such a proposition.

XQ24. Did you write the Warner Company to that effect?

Objection repeated.

A. I do not remember whether I wrote them, or told Mr. Nowlin, or Mr. Pfeiffer personally. But it is my recollection that I did convey that impression.

XQ25. And it was after you conveyed that impression that you took a trip with Nowlin, was it not?

Same objection.

A. I do not remember. My recollection is that the trip with Nowlin was made previous to the time the change of territory proposition was brought up.

XQ26. I hand you a typewritten paper. Do you believe this to be a copy of the letter you wrote Warner & Co. It is dated August 23rd, 1908?

Objection repeated.

A. I am not sure, but I think so.

XQ27. Do you believe it is or do you believe it is not?

Same objection.

A. I can not state positively.

XQ28. Whether it is what you wrote, does it express the feelings you had at that time toward the Warner Company?

Same objection.

A. That occurred eight years ago, approximately, and I can not state positively as to my feelings at that time. My memory does not serve me to that extent.

XQ29. At that time were you dissatisfied with the Warner Company's apparent intention to change your territory?

Same objection.

A. I believe I was.

XQ30. At that time did you feel that you had not

been fairly treated by the Warner Company or Mr. Pfeiffer?

Same objection.

A. Possibly; I do not remember.

R. V. PERINE.

By agreement of counsel the letter shown this witness is here offered in evidence for the information of the Court and marked "Plaintiff's Exhibit, Perine Letter." It is noted that the letter has no signature, and apparently does not contain the closing part of the letter.

The letter is as follows:

"August 23rd, 1908.

Messrs. Wm. R. Warner & Co.,
Philadelphia, Pa.

Gentlemen:

I have just returned to my office from an interview with Mr. W. D. Nowlin, who informs me that I am no longer to work for Wm. R. Warner & Co., but am to become an employee of the Pfeiffer Chemical Co. Further, I am to no longer have a Texas territory, but am to be transferred to some other part of the country—(Mr. Nowlin does not know just where)—and am to have an entirely new contract, too,—with the P. C. Co., and he wanted me to leave with him tonight, for a week's trip, to be instructed regarding the Pfeiffer line and policies. Now, I can not work in certain territories,—in the North, for instance; I cannot stand the Northern winters, and as my wife is subject to malaria, we could not live in a malarial section—in Mississippi or Arkansas, for example. I gave up a better position with another house, in Louisiana, to accept one with Mr. Nickells and the Warner Co., because I could get a Texas territory. So I can not accept Mr. Nowlin's proposition, nor, on

the other hand, do I wish to decline it, until I know definitely what territory and what contract the Pfeiffer Co. have to offer me, and it seems a needless expense to go out with Mr. Nowlin on the proposed trip, incurring double expense, when there is a chance that it will be unnecessary—that I can not continue with the line.

Incidentally I must say that I do not feel that I have been accorded the fair treatment Mr. Pfeiffer's original letter on the subject promised Warner's representatives. Mr. Nowlin has just finished coaching a brand new salesman—a Mr. Moor —who is to have a Texas territory. I certainly think I should have been given a chance at the territory in question, as I am entirely familiar with it, while Mr. Moore is not—besides, being already in your employ, I should have taken precedent over a new man.

Until I hear from you I shall continue working in this section in the interests of Wm. R. Warner & Co., as heretofore, and will try to adjust the differences with the San Antonio Drug Co., and the Houston Drug Co., as per instructions from Mr. G. A. Pfeiffer."

Recess until 2 P. M.

After recess.

WILLIAM SEEGER, JR., a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation.

A. William Seeger, Jr.; age 32; San Antonio, Texas;

retail druggist, proprietor of the Sap Drug Store. I have been proprietor of that store about four and a half years.

Q2. Do you know a traveling salesman for Wm. R. Warner & Co. by the name of H. H. Richards?

A. Yes.

Q3. How long have known him?

A. About two years.

Q4. Does he call at your store and solicit orders for products sold by his house?

A. Yes, sir.

Q5. Among other preparations which he sells has he ever asked you to buy Quin-Coco, and if so, what did he say about this preparation?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject having been fully taken up in plaintiff's prima facie case, of which it formed an essential part.

A. Yes, and he said it looked like Coco-Quinine, and that it was cheaper and could be used in the place of Coco-Quinine.

Q6. Do you recall anything else that he said about it?

A. That is all.

Q7. Did he tell you whether or not any one could tell the difference between the two?

By Mr. Rawle: Objected to as not rebuttal, and as leading, the witness having already answered the question.

By Mr. Bradford: Question withdrawn.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (at 3 P. M., without waiver of objections):

XQ8. Have you talked with any Lilly man about this case?

A. I have talked with Mr. Fred A. Burns.

XQ9. When?

A. I guess it has been six months ago the first time.

XQ10. How often since?

A. I don't think we talked about it since. I have seen him several times, but all he said about it in a joking way was that he wanted me as a witness, to give my evidence in the case.

XQ11. Have you seen him here today?

A. Yes, sir.

XQ12. Have you been a customer of Wm. R. Warner & Co.?

A. Yes, sir.

XQ13. A pretty good one?

A. Mr. Richards said I was one of the best customers he has in town.

XQ14. I understand that you keep a first class drug store in San Antonio, is that correct?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. I try to.

XQ15. Are you good friends with Richards?

Same objection.

A. Yes, sir.

XQ16. Do you consider him an honest and square drug salesman?

Same objection.

A. Yes, sir.

XQ17. For how many years have you been carrying Quin-Coco in stock?

A. I don't remember the first shipment, exactly when I bought it, a couple of years ago, when I bought my first shipment of it.

XQ18. I show you an order for Quin-Coco, received from you, dated October 19th, 1912. Is that the first time that you bought Quin-Coco from Mr. Richards?

A. I guess it must be along there. But that goes to show that I bought it there at that date.

XQ19. And you have been carrying some of it ever since?

A. Yes, but I have not got any just now.

Cross-examination closed at 3.07.

Re-direct-examination.

By Mr. Bradford:

RDQ20. I notice the order shown you by defendant's counsel is headed "Sold to Sap Drug Store, Simon & Seeger." Who was Mr. Simon?

A. Mr. Simon was my partner at that time. I bought him out since.

RDQ21. When did you buy him out?

A. I bought him out in 1913. It was either May or June, 1913, or 1914; I can't remember which.

RDQ22. Do you remember whether this particular bill of goods was purchased by you or by Mr. Simon?

A. No, I don't remember, but I think it was by myself.

RDQ23. When you first talked about this matter with Mr. Burns, what did you tell Mr. Burns?

By Mr. Rawle: Objected to as not proper for cross-examination and as inadmissible.

A. He asked me whether I needed any Coco-Quinine, and I told him I had plenty of Quin-Coco at that time on hand, and he said that that was not Coco-Quinine. Then I said, Mr. Richards said it looked like Coco-Quinine, and that it is cheaper, and that you could not tell the difference from Coco-Quinine. That was about all that was said about it.

RDQ24. Do you sell it for Coco-Quinine?

A. No.

RDQ25. What do you sell it for?

Same objections.

A. Chocolate quinine.

RDQ26. Do your customers ever ask for Quin-Coco?

A. No, sir.

Re-cross-examination.

By Mr. Rawle (without waiver of objections):

RXQ27. Have you calls for chocolate quinine?

A. No, we don't have very many calls for it. We have some.

RXQ28. Any for sweet quinine, or syrup for quinine?

A. We have calls for syrup of quinine, where we recommend it over the counter.

RXQ29. What do you mean by "it"?

A. We recommend chocolate quinine.

RXQ30. And what do you give them?

A. We give them Quin-Coco as long as we had any on hand.

Re-re-direct-examination.

By Mr. Bradford:

RRDQ31. What is syrup of quinine?

A. It is amorpheus quinine made up in lemon syrup; it is white.

By Mr. Rawle:

RRXQ32. Please explain what you mean by "amorpheus quinine"?

A. It is termed "amorpheus" after giving a treatment with citric acid solution, in order to hold it in suspension or solution.

Deposition closed.

Wm. Seeger, Jr.

Counsel for defendant having been notified that the deposition of Dr. H. H. Brown, a physician, of Yokum, Texas, will be taken at that place tomorrow, and that this involves a night ride of a hundred and twenty miles, to be followed by another night ride to Dallas, Texas, is willing to stipulate, and does stipulate, that if Dr. Brown be called as a witness he would testify substantially as follows:

That he was interviewed by counsel for plaintiff in Boston, Mass., about June, 1915, and afterwards in Yokum, Texas, by counsel, and Mr. Fred A. Burns, representing Eli Lilly & Co., in reference to statements made by G. H. Turner, when testifying as a witness for plaintiff in this case, particularly said witness Turner's statement in answers to Q4 to Q10, pages 595-597, Plaintiff's Record; that he remembers having prescribed Coco-Quinine in his practice, and that prescriptions for this preparation were filled at the drug stone of the Weyman-Garner Drug Company, in Yokum; that after a time the results of the use of the medicine with his patients became unsatisfactory, in that the children could not seem to retain it; that because of these unsatisfactory results he quit using Coco-Quinine in his practice; that he recalls having stated to said Turner that Eli Lilly & Co. must be doing business on their past reputation, believing that their preparation had been depreciated in quality because of these bad results; that said witness Turner confessed to him that he had filled the prescriptions in question with Quin-Coco, Warner, and not with Coco-Quinine, Lilly; that this incident and others determined him to have a drug store of his own, where he could know that his prescriptions would be filled as written, and he bought a drug store chiefly for this reason; that some time later he stocked Coco-Quinine, Lilly, at his own

store, resumed the use of the preparation in his prescriptions, and that its use since that time has been uniformly satisfactory, the results expected being secured.

By Mr. Rawle: The deposition is objected to as *res inter alios acta*, as irrrelevant and immaterial and not affecting any right of the defendant.

By Mr. Rawle: Notice is given of motion to strike out the depositions taken here at San Antonio, for the reasons given, and because the same are not proper for rebuttal.

Fred A. Burns, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows:

By Mr. Bradford:

Q1. Are you the same Fred A. Burns who has heretofore testified in this case on behalf of plaintiff?

A. I am.

Q2. Please state on the record the facts regarding an incident that took place in the drug store of F. A. Chapa, in this city, some time ago, in your presence and within your knowledge, respecting the filling of a prescription calling for "Coco-Quinine," with the preparation called "Quin-Coco"?

By Mr. Rawle: Objected to as not proper for rebuttal, and because the matter inquired of is *res inter alios acta*, and can not affect any right of the defendant.

A. While I was in the prescription room of F. A. Chapa's drug store, a prescription came in written for "Coco-Quinine." The druggist picked up the prescription and filled it from a bottle labeled "Quin-Coco." The druggist was R. A. Alejandro, the prescription clerk in Chapa's drug store. After he had

filled the prescription, written the label, pasted it on the bottle, I asked him why he used "Quin-Coco" when the prescription plainly called for Coco-Quinine. He said he had instructions from Mr. Chapa, the proprietor of the drug store, to fill all prescriptions for Coco-Quinine with Quin-Coco. That they did not have any Coco-Quinine in stock and did not carry it.

I went back to the drug store the next day to see Mr. Chapa, who was not in. I called the second day and found Mr. Chapa in. I related the circumstance of the clerk filling the prescription written for Coco-Quinine with Quin-Coco, and asked him why he did it. He said that Quin-Coco was the same preparation as Coco-Quinine, and the difference between the two could not be detected. I asked him how he knew this. Why he did not use essence of pepsin or elixir lactated pepsin when Coco-Quinine was written for, that he would be just as justifiable in using those as in using Quin-Coco. He said that Wm. R. Warner & Co.'s representative told him that Quin-Coco and Coco-Quinine were identical and that it was the same thing.

This was about the middle of May, 1915.

By Mr. Rawle: The answer is objected to for the same reasons and as being hearsay.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ3. At this talk did Mr. Chapa say, in substance, that if he used Quin-Coco or Coco-Quinine in any improper way the Lilly Company could sue him if they wanted to?

A. No, sir, he did not say that.

XQ4. Is not Mr. Chapa the gentleman called Col. Chapa, occupying a position on the Governor's staff, and of importance in the Texas militia?

A. He is the same man; yes, sir.

XQ5. How often have you seen him to ask him to be a witness in this case?

A. About twice.

XQ6. About how many drug stores are there in San Antonio?

By Mr. Bradford: Objected to as irrelevant and immaterial, and not cross-examination.

A. About sixty.

Deposition closed.

Fred A. Burns.

Notice of motion to strike out this deposition for the reasons given is here made.

Adjourned to meet Saturday, August 19th, 1916, at 10 A. M., at Hotel Oriental, Dallas, Texas.

Dallas, Texas,
Oriental Hotel,
August 19th, 1916.

Met pursuant to adjournment.

Parties present as before.

By agreement of counsel, owing to illness of witness Nowlin, his deposition was taken at his residence, 613 West Ninth Street, Oak Cliff, Dallas, Texas.

Dabney W. Nowlin, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. Dabney W. Nowlin; aged 44; Dallas, Texas; traveling salesman; that is, I was, but I have not been

traveling since November, 1915, when I met with an accident and have been laid up since. I was formerly a drug salesman. I traveled last for Nelson Baker Company.

Q2. I understand that you formerly traveled for the Pfeiffer Chemical Company and Wm. R. Warner & Co.; that Mr. John Hudson and Mr. R. J. Bynum, representatives of the Eli Lilly & Co., have talked with you about this case; that they asked you to be a witness on behalf of plaintiff in this case; that you declined to do so, and that you have been subpoenaed and are testifying this morning in response to the subpoena. This is correct, is it not?

A. Yes, sir.

Q3. When acting as a traveling salesman for Wm. R. Warner & Co. did you, among other items, sell an item called Quin-Coco?

A. Yes.

Q4. What was your territory?

A. I believe they called it Central Texas; I believe that is the way it was mapped, including Dallas, Fort Worth, Greenville, Cleburne, Waxahatchi, Hillsboro, Waco Tyler and smaller towns in the same territory.

Q5. How did the preparation Quin-Coco compare as a seller with other items in your line?

A. It was a good seller. I believe it was about, if not, the largest seller that I had in the pharmaceutical line.

Q6. Can you state approximately or give an approximate estimate of what your sales per month would be of this one item, Quin-Coco?

A. That would be very hard for me to do.

By Mr. Rawle: Question and answer objected to as immaterial.

Q7. What is your best judgment, based upon your recollection of the sales you made?

Same objection.

A. Some months I would possibly sell, I would say, two hundred gallons; other months my sales would be very small, possibly averaging fifty gallons.

Q8. How much, if you remember, did you ever sell in any single day of this one item?

Same objection.

A. I believe that I have sold as much as thirty to forty gallons some days.

Q9. How often would you think you had a two-hundred-gallon month?

Same objection.

A. Quite often.

Q10. And how often the thirty or forty gallon days?

Same objection.

A. Comparatively speaking, seldom.

Q11. Did you have any special reason for pushing this particular item, and if so, what was it?

Same objection.

A. My house had told me it was a profitable item and my instructions were to push all profitable goods.

By Mr. Rawle: The answer is objected to unless the name of the house is given.

Q12. Any other reasons?

Same objection.

A. No other particular reason, only I liked to romp on my friend Bynum.

Q13. Who was Mr. Bynum, and what was he doing at that time?

Same objection.

A. Mr. Bynum was traveling the same territory for Eli Lilly & Co.

Q14. And selling their preparations, including Coco-Quinine?

Same objection.

A. Yes, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ15. When did you leave the Warner employ?

A. I believe it was in the latter part of 1912, as well as I remember.

XQ16. Is the Mr. Bynum, who used to represent Lilly, the gentleman who is here present?

A. Yes, sir.

XQ17. And Hudson is the present Lilly salesman in the territory including Dallas?

A. Yes, sir.

XQ18. How often have you seen either of those gentlemen about testifying in this case, or talked to them about this case?

A. I have seen Hudson four times and Bynum three times, I believe.

XQ19. When did you first see each of them and talk about the case, and where?

A. Hudson called at my house April 29th, 1916, in the afternoon; Hudson and Bynum then called several weeks later, July 4th; then Hudson called again by himself a few weeks later; then Hudson and Bynum called together yesterday.

XQ20. About when did you begin to sell Quin-Coco for Warner?

A. When I first went in their employ; I was with them seven years; I started with them in December, 1905, as well as I remember; it might have been in 1906.

XQ21. In selling these quanaities of Quin-Coco

what book or catalogue did you use in your interview with the druggist?

A. Searle & Hereth catalogue.

XQ22. But you sold the entire Warner line, did you not, after August, 1908, when the Warner Company and Pfeiffer Company came together?

A. A part of the time I sold the combined lines and a part of the time they had two sets of salesmen working the same territory. During this latter time I did not sell pharmaceuticals.

XQ23. When you sold the combined lines, what catalogue or demonstration book did you have?

A. I had Pfeiffer Chemical Company, Searle & Hereth, Mellier's and Wm. R. Warner & Company's.

XQ24. Did you not have the salesman's demonstration book; a blank book with labels pasted in it?

A. Yes.

XQ25. Did these labels cover practically the entire line you were selling to the particular customer?

A. They did.

XQ26. And the druggist would turn over the pages of the book containing the labels and would buy from that; is that correct?

A. Sometimes they would turn the pages; sometimes I would turn the pages. But they most invariably made their selection from the labels in what we called a demonstration book.

XQ27. Whether you turned the pages or the druggist did, I assume that the printing on the labels was facing the druggist in either case?

A. It was always my intention to have the labels facing him.

XQ28. Was this demonstration book part of your salesman's outfit furnished by the company?

By Mr. Bradford: Objected to as not cross-examination and as immaterial and irrelevant; the same objection is made to all questions based on this demonstration book. It is not seen to have

any bearing upon any fact developed in the direct-examination.

A. It was.

By Mr. Rawle: Mr. Rawle states that he had expected to have the demonstration books present for identification by the witness, but it did not reach him, but reserves the right to produce them and identify them at a later date.

By Mr. Bradford: Objection is made to any production or identification of any demonstration book as improper, irrelevant, and not cross-examination.

XQ29. Approximately how many drug stores were there in your territory?

A. It would be almost impossible for me to answer that question. I would say something more than a thousand, but that is merely guesswork.

XQ30. You have no doubt, have you, that there was over eight hundred?

A. I am sure there were.

Re-direct-examination.

By Mr. Bradford:

RDQ31. You stated that you used a Searle & Hereth catalogue in selling Quin-Coco. I show you a book bearing the imprint "Price List 1908-9, Searle & Hereth Co." and ask you if this is the catalogue you had in mind when you answered Mr. Rawle's question?

A. That is one of the catalogues that I used, and I am of the opinion the last catalogue that I used was returned with the samples when I resigned.

RDQ32. Do you recall whether you had any Searle & Hereth catalogue, in which the item Quin-Coco was listed, prior to the 1908-9 issue?

A. The first Searle & Hereth catalogue that I had, as I remember, was a catalogue that was gotten out by

the Searle & Hereth people before the Pfeiffer Company acquired the Searle & Hereth Company. I can not say at this time whether Quin-Coco was mentioned in that catalogue.

Deposition closed.

D. W. NOWLIN.

A. HOMER SINCLAIR, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. A. Homer Sinclair; age 35; Dallas, Texas; retail drug clerk. I am employed at the El Merito Pharmacy, Main and Irving Streets, as prescription clerk. I have been there four years next November. I was prescription clerk and buyer at the Oak Cliff Pharmacy during the years 1909, 1910 and 1911. I then bought an interest in the Red Cross Pharmacy in Oak Cliff and was there until June, 1912. I was out of business for about four months, until November, 1912, when I took my present position. I am here in response to subpoena served on me.

By MR. RAWLE: Provisional objection made to the witness, as his name has not previously been given to defendant's counsel.

Q2. As a buyer of pharmaceuticals for any of the stores where you have been employed, have you ever been solicited to buy Quin-Coco, and if so by whom and when?

A. Yes, sir; by Mr. D. W. Nowlin, salesman for Wm. R. Warner & Co., the Searle & Hereth Company and the Pfeiffer Chemical Company. He handled the

combined line. It was in 1909 or 1910, while I was buyer at the Oak Cliff Pharmacy.

Q3. What statements did he make to you respecting Quin-Coco when soliciting your orders?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject constituting plaintiff's prima facie case, and having been fully examined on that part of the proceedings.

A. He told me that it was the same article as Coco-Quinine, and that it could be bought considerably cheaper; that he could sell me a gallon for the same price as five pints of Coco-Quinine, plus about twenty cents.

Q4. Did he say anything to you about how you could dispense Quin-Coco, or what did he say?

By Mr. Rawle: Same objection and as leading, the witness having already answered the question.

A. I don't remember that he said anything specifically to that effect, but the impression that I gained was that it was the same formula, the same strength as Coco-Quinine.

Q5. Have you ever seen a prescription written by a physician for Quin-Coco?

A. I don't remember that I ever have.

Q6. About how many years have you been in the retail drug business?

A. About fifteen or sixteen.

Direct-examination closed.

No cross-examination.

Deposition closed.

A. Homer Sinclair.

Recess until 2 P. M.

After recess.

WILLIAM J. POWELL, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. William J. Powell; aged 37; Dallas, Texas; retail druggist, one of the proprietors of Browder's Drug Store, located at the corner of Jefferson and Beckley Streets, this city. I have been at this store about one month. Prior to that time for seven and a half years at the Oak Cliff Pharmacy, and prior to that time I was at the Red Cross Pharmacy for about a year, and prior to that time for about one year I was at Fort Worth at Covey & Martin's drug store. Prior to that I was with the Yeager Drug Company, Mineral Wells, Texas, a little over six years.

By MR. RAWLE: Objection is made that the name of the witness was not given in the notice.

By MR. BRADFORD: This witness and the last one examined were called under notice given to counsel for defendant, that while on this trip it might be necessary to call some witnesses whose names were not known to counsel for plaintiff at that time, in order to avoid making trips or going to unnecessary expense to obtain the evidence.

Q2. At what stores named in your last answer have you done the buying or had to do with the buying?

A. Not any, except the Oak Cliff Pharmacy and the Red Cross Pharmacy.

Q3. While at either of these stores did you buy a preparation called Quin-Coco, and if so from whom did you buy it?

A. Yes, sir; from Mr. D. W. Nowlin, and also Mr. E. R. Russell, both representatives of Wm. R. Warner & Co.

Q4. About when and where did Mr. D. W. Nowlin solicit your order for Quin-Coco?

A. It has been about seven years ago, at the Oak Cliff Pharmacy.

Q5. What did Mr. Nowlin say to you respecting Quin-Coco when soliciting your order?

By Mr. Rawle: Objected to as not proper for rebuttal, as forming part of plaintiff's *prima facie* case and having been there fully gone into.

A. I would not say at all times, but he has at times said how much Coco-Quinine do you want. He has asked me how much Quin-Coco do you want, at times.

Q6. What else did he have to say to you about this preparation?

Same objection.

A. At first, when he first used to come to the store, he used to always say that it is just as good as Coco-Quinine, if not better.

Q7. How did you dispense Quin-Coco?

Same objections and because the matter inquired of is between third parties and can not affect any rights of the defendant.

A. In two and four ounce bottles, usually. We kept one ounce bottles put up too, 15 cent sellers. Two ounce bottles sold for 25 cents and four ounce bottles for 50 cents.

Q8. How were these bottles labeled?

Same objection.

A. Coco-Quinine.

Q9. How about prescriptions for Coco-Quinine?

Same objection.

A. Well all prescriptions come as Coco-Quinine, and were filled with Quin-Coco.

Q10. Why did you use Quin-Coco in filling prescriptions calling for Coco-Quinine?

By Mr. Rawle: Objected to for the same reason and for the even stronger reason that the witness' "why" is not admissible evidence against this defendant.

A. Well, it was sold us as good as Coco-Quinine, but a cheaper article, you might call it.

By Mr. Rawle: The answer is objected to as stating a mere generalization on the mind of the witness and not facts.

Q11. What do you mean by the words "as good as"?

Same objections.

A. I mean this, that his Quin-Coco was the same as the Coco-Quinine. He represented the Quin-Coco to be the same as Coco-Quinine.

Q12. In what respect as good, therapeutically, physically or in what respect as good?

Same objection.

A. Only as he represented it, as Mr. Nowlin represented it.

Q13. Did you feel justified in dispensing Quin-Coco on calls for Coco-Quinine, because of these representations to you by Mr. Nowlin?

By Mr. Rawle: Same objections, what the witness "felt" is not evidence.

A. Yes, sir.

Q14. In what quantities as a rule did the Oak Cliff Pharmacy purchase Quin-Coco?

Objected to as not rebuttal and as immaterial.

A. Five one gallons, at a time.

Q15. How often did you purchase five gallons?

Same objections.

A. Every two to three months.

Q16. On what representations did Mr. Russell solicit your order for Quin-Coco?

Objected to as not proper for rebuttal.

A. About the same as Mr. Nowlin.

Q17. Did you also purchase Coco-Quinine during the same period?

A. We usually bought about five pints a year.

Q18. Did you ever see a prescription written for Quin-Coco either at the Oak Cliff Pharmacy or at any other pharmacy where you had worked?

A. No, sir.

Q19. Did you ever hear a customer ask for Quin-Coco?

A. No, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ20. When you were buying Quin-Coco from Nowlin, I suppose you knew that Coco-Quinine was a Lilly product and that the Warner product was Quin-Coco. Is that correct?

A. Yes, sir.

XQ21. When Nowlin or Russell would open up the interview and begin his efforts to sell you his line, did he have a blank book having the labels of his line pasted in it, and did he lay this book with the labels in it before you, and did you run over his stock by looking at the labels in his demonstration book?

By Mr. Bradford: Objected to as not cross-examination, as irrelevant and immaterial.

A. No, sir; I don't know that I ever did.

XQ22. When did you last buy any goods from Russell?

A. I would say about six or seven years ago.

XQ23. When you bought from Nowlin might it have been as early as 1907?

A. Well, sir, I could not say, exactly, it might have been.

XQ24. Could it have been as early as that when you bought from Russell?

A. No, sir; I think we bought from Mr. Russell after we bought from Mr. Nowlin.

XQ25. And about how many years ago?

A. Six or seven years ago.

XQ26. Did not Russell go over his list by placing before you a book that had all the labels pasted in it?

By Mr. Bradford: Objected to as not cross-examination and as irrelevant and immaterial.

A. No, sir; he never had any book with labels pasted in it, as far as I saw.

XQ27. When Nowlin or Russell called on you would they offer you the entire Warner or Pfeiffer Chemical Company line, or Searle & Hereth line?

A. Yes, sir.

XQ28. What employee of the Lilly Company have you talked with in regard to testifying in this case and when?

A. I talked with Mr. Hudson about six weeks ago, and have not talked to him about this case since. I saw him again this morning about nine o'clock when I came here in answer to a subpoena, served on me yesterday.

XQ29. Did you ever have a call for a sweet chocolate preparation under the name of chocolate quinine, or sweet quinine?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. Yes, sir; I have had calls for chocolate quinine and also calls for sweet quinine, but the majority of the calls were for Coco-Quinine.

XQ30. Do you have calls for that kind of a prep-

aration under any other name than those you have just given?

By Mr. Bradford: Same objection and as not cross-examination.

A. No, sir.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ31. Did the Oak Cliff Pharmacy ever buy Quin-Coco from Wm. R. Warner & Co., through any other agency than Mr. Nowlin or Mr. Russell?

A. No, sir; except direct from them by mail.

RDQ32. How were the orders for this preparation written when they were sent in by mail?

By Mr. Rawle: Objected to as not rebuttal and as not evidence without the production of the orders.

A. I am not positive, but I think that each time it was ordered as Coco-Quinine, the order was for Coco-Quinine.

RDQ33. Are you reasonably certain that it was some of the time?

By Mr. Rawle: Objected to as not rebuttal, as leading the witness, and because the order is not produced, and because the act of the witness is the act of a third party and can not bind the defendant, and because no time is stated.

A. Yes, sir.

RDQ34. What did you receive from Wm. R. Warner & Co., in response to your written orders for Coco-Quinine?

A. Quin-Coco.

Re-cross-examination.

By Mr. Rawle:

RXQ35. Did you not know that Wm. R. Warner marketed Quin-Coco and that Coco-Quinine was the product of Lilly & Co. when you sent mail orders?

A. Yes, sir; I would say to Mr. Grigsby, the bookkeeper, order five gallons of Coco-Quinine from Wm. R. Warner & Co.

RXQ36. And then Grigsby would send the order?

A. Yes, sir.

RXQ37. And you did not write the order yourself?

A. No, sir.

RXQ38. When was this?

A. Well, I would say from six to nine years ago.

RXQ39. Nearer nine than six.

A. Between the two, anywhere from six to nine.

Re-re-direct-examination.

By Mr. Bradford:

RRDQ40. Did you see the orders after written by Grigsby and did you ever read one written for Coco-Quinine and addressed to Wm. R. Warner & Co.?

A. Yes, sir.

Re-re-cross-examination.

By Mr. Rawle:

RRXQ41. Did you know you were getting Quin-Coco when you sent that mail order to Warner?

A. Yes, sir.

RRXQ42. Can you remember of a period of from six to nine years exactly what Grigsby wrote down on a mail order, when you told him to order a certain preparation?

A. No, sir; I could not give you exactly the time.

RRXQ43. Q42 repeated.

A. No, sir.
RRXQ44. Where is Grigsby?
A. He is in Dallas.

Deposition Closed.

WILLIAM J. POWELL.

By MR. RAWLE: The notice is renewed of a motion to strike out the depositions as objected to and for the reasons given.

Defendant's counsel asks plaintiff's counsel whether a noticed witness, E. R. Russell, of Dallas, Texas, who has not been this day examined at Dallas, is a person who was a former salesman of the defendant?

By MR. BRADFORD: Mr. Bradford responds, the E. R. Russell referred to has acknowledged to him at an interview today that he was formerly employed by Wm. R. Warner & Co., but that he does not remember what representations he made to the trade when soliciting their orders for Quin-Coco and has shown a disposition not to answer frankly questions which it was desired to submit to him and that although he was subpoenaed as a witness he has been excused. It is understood, however, that he has been paid his legal fee of $1.50 as a witness.

Adjourned subject to notice and agreement of counsel.

Indianapolis, Indiana,
October 23, 1916—2 p. m.

Met pursuant to agreement and notice.

Present:

Mr. E. W. Bradford, on behalf of plaintiff; and
Mr. Francis Rawle, on behalf of defendant.

G. A. Lavison, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. G. A. Lavison; age 45; Memphis, Tenn.; retail druggist.

Q2. How long have you been in the retail drug business?

A. I began as a clerk when I was about sixteen or seventeen years of age in the store of H. H. Collier, in Memphis, Tenn., and have been in the retail drug business ever since. I clerked for Mr. Collier for about ten or twelve years, then for Bond & Company, in Memphis, Tenn., up to the time I went in business for myself on January 1st, 1905. I then opened a drug store known as Lavison's Pharmacy, 247 McLemore Avenue, Memphis, Tenn., where I was in business until about the first of 1912, when I moved across the street, where I was in business for about three years. I sold out this business about the last of February, 1915, on account of ill health and was away for four months in Tampa, Florida, for my health. Since my return to Memphis I have been doing relief work in different drug stores as a prescription clerk.

Q3. Do you know a man by the name of Alva Lee

Kelton, and if so, who is he and when did you know him?

A. I knew Mr. Kelton as a salesman for the Pfeiffer Chemical Company, and later he included the line of Wm. R. Warner & Co. I knew him from the time I went in business. He sold me goods right from the beginning of my opening of Lavison's Pharmacy. In fact I knew him while I was clerking for Bond & Company.

Q4. Did Mr. Kelton ever solicit your order for a preparation known as Quin-Coco, and if so, when and on what representations?

A. He did. It was about eight years ago, while I was in business for myself. He represented it to be exactly the same in every respect as Coco-Quinine, a preparation made by Eli Lilly & Company, and that it could be used as a substitute on physicians' prescriptions written for Coco-Quinine, without any one knowing the difference. He said it was identically the same thing.

Q5. Did you purchase the preparation?

A. I hesitated to accept Mr. Kelton's representations and did not buy when he first solicited my order. The next day he returned with Mr. Henry Pfeiffer and took up the subject again, and Mr. Pfeiffer represented it the same as he did, that it was the same as Coco-Quinine, and told me that I could use it for Coco-Quinine, in any way that Coco-Quinine was used. They both assured me that it was the same thing and much cheaper. It being the same thing and cheaper was the inducement offered to purchase.

I don't remember whether I purchased then, but I did later. I purchased it all the time thereafter while I was in business.

By Mr. Rawle: Mr. Rawle, having just come into the room at this point, Mr. Bradford, having, with Mr. Rawle's acquiescence, proceeded with the witness, now objects as follows:

Because the questions and the answers thereto are not proper for rebuttal, the subject matter constituting part of the plaintiff's evidence on the *prima facie* case.

Notice of a motion to strike out such evidence and any evidence to be taken along the same line, is hereby given.

Q6. What other items, if any, were discussed at the interview above referred to?

By Mr. Rawle: Same objection.

A. They handled a variety of things. I gave them a general order for such. I bought different things from them. I can tell you mighty near everything I ever bought from them.

Q7. Name over some of the items that you bought from them?

Same objection and because the evidence is immaterial and inadmissible and irrelevant.

A. I bought some perfumes from them. I bought other non-secret preparations from them at different times, that consisted of cough syrups, liver preparations and their whole line. I carried a complete line of their stuff.

Q8. What perfumes were bought?

Same objection.

A. I bought Violet extract from them, White Rose, Florita, Heliotrope and half a dozen others. I may have bought others.

Q9. Were any of these perfumes represented to you to be substitutes for other perfumes, and if so, which ones?

Objected to as not proper for rebuttal, as immaterial, and inadmissible, as leading, and because the question calls for inferences and not for a statement of what was said.

A. Mr. Kelton represented the "Florita" as a substitute for "Janice". "Janice" is a perfume made by Allen Pfeiffer Chemical Company. I bought and sold quite a bit of "Florita" and found that it was a duplicate of "Janice", so much so, that a representative of the Allen Pfeiffer Chemical Company told me positively that it was "Janice".

Q10. How was the test made by the representative of the Allen Pfeiffer Chemical Company?

Same objections.

A. By color and odor of same, and it being in a "Janice" bottle.

Q11. Did you customarily sell it from a "Janice" bottle?

Objected to as not proper for rebuttal, as irrelevant and as leading.

A. I sold it both ways.

Q12. Was any other inducement held out to you to purchase goods from Mr. Kelton and Mr. Pfeiffer, and if so, what was it?

Objected to as not proper for rebuttal, and because the question is not confined to the preparation here in dispute, and because the only proper question is as to what was said.

A. What do you mean by "inducement"?

Q13. I mean did they give you any present or offer you any present or anything of this kind?

Same objections.

A. They gave me a large glass mortar sign to go out in front of the store. Said sign was lit up by electricity and advertised Mellier's Perfumes as well as having my name on same.

Q14. Was this given as a premium with the goods purchased, or for what purpose?

Objected to as not rebuttal and as leading, the only proper question being as to what was said.

A. This sign was given to any one who purchased a certain quantity of their perfumes. While I did not purchase quite the amount required at that time, yet they gave me the sign on the strength of future orders.

Q15. Why did you hesitate to accept Mr. Kelton's assurance that Quin-Coco was the same thing as Coco-Quinine, and could be sold for the same?

Objected to as not rebuttal, as irrelevant, and because the only motive that actuated the witness is not evidence for any purpose in this case.

A. Mr. Kelton being a salesman would naturally try to show causes why this article should be purchased when such perhaps were not really the case. He afterwards brought Mr. Pfeiffer out to see me and upon being assured by Mr. Pfeiffer that it was the same and could be used as the same, I thought better of it.

Q16. How was Coco-Quinine dispensed in your store?

Objected to as not rebuttal and as irrelevant.

A. On physicians' prescriptions; also sold at retail in small bottles.

Q17. Did you ever receive a prescription written for Quin-Coco?

Objected to as not rebuttal and as irrelevant.

A. I never did.

Q18. Did you ever have a customer ask for Quin-Coco?

A. Not by that name.

Q19. Did you fill prescriptions written for Coco-Quinine with Quin-Coco?

Objected to as not rebuttal and because the unauthorized acts of the witness is not evidence against the defendant for any purpose.

A. I have.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ20. When Kelton called on you at that time, had you previously had Quin-Coco in stock?

A. I had not.

XQ21. For how many years previous to that had Kelton been soliciting your trade, approximately?

A. I purchased goods from Mr. Kelton from the very beginning when I went into business.

XQ22. What year was that?

A. I went into business January 1, 1905.

XQ23. About how often each year did Kelton used to call on you for orders?

A. About three or four times perhaps, approximately, I am not certain. About three or four times.

XQ24. About how many drug salesmen used to call on you at that time in each week?

Objected to as immaterial and irrelevant.

A. I don't know.

XQ25. State about how many approximately. I mean how many drug salesmen called in and solicited your trade?

Same objection.

A. Two or three or more, perhaps.

XQ26. At that call by Kelton do you remember about how long he stayed and talked to you?

Same objection.

A. I should say about an hour or something like that.

XQ27. Did he go over his entire line with you?

Same objection.

A. He usually did.

XQ28. In going over his line did he have a blank book with the labels of his line pasted in it and go through that book with you?

Same objection.

A. He had a book showing the various labels of his perfume line; also a sample case containing the cartons of his non-secret line.

XQ29. Were not the cartons of his non-secret line also pasted in his book?

Same objection.

A. They were; he had a book of such.

XQ30. And either he or you turned over the leaves of that book. Is that correct?

Same objection.

A. Yes, sir.

XQ31. Do you say that it was the next day that Kelton brought in Henry Pfeiffer to see you?

A. To the best of my knowledge and belief it was the next afternoon.

XQ32. And I understood you to testify above that Mr. Henry Pfeiffer told you that Quin-Coco was the same as Coco-Quinine and you could use it for Coco-Quinine in any way that Coco-Quinine was used, and that it was the same thing and much cheaper. Is that correct?

A. It is.

XQ33. Is that what Kelton had told you the day before?

A. It is.

XQ34. Can you give the language of Mr. Pfeiffer in the words in which he spoke?

A. I do not know that I could give his exact words. I know that he told me it was the same as Coco-Quinine, identically the same, and the difference could not be told, and that it could be used in any way that Coco-Quinine was used.

XQ35. That is, that they were the same preparations, pharmaceutically. Is that correct?

A. That they were the same preparation in every way.

XQ36. And his was cheaper?

A. And cheaper; yes, sir.

XQ37. And that is the substance of what they both told you?

A. It is.

XQ38. When Kelton was trying to sell you "Florita" did he say that it was substantially the same perfume as "Janice"?

A. He did, yes.

XQ30. Smelt just like it?

A. Yes, sir.

XQ40. Made of the same ingredients?

A. I don't know about that, I don't know what either one of them was made of.

XQ41. But he said it was the same or a similar perfume, is that correct, as "Janice"?

A. Yes, sir.

XQ42. And that is the substance of what he said to you about "Florita"?

A. Yes, sir.

XQ43. And after you bought "Florita" you sometimes sold it in "Janice" bottles. Is that correct?

A. I have done so; yes, sir.

XQ44. Did you do this frequently?

A. Occasionally I did it.

XQ45. Name some other drugs or preparations as to which you sold one for another, like you sold "Florita" for "Janice"?

A. None that I remember in particular, except Quin-Coco, which I have sold for Coco-Quinine.

XQ46. Then you swear that as to every other drug or preparation you invariably gave the customer or the physician's patient who brought in a prescription, the exact drug or preparation which the customer or the prescription called for?

A. I did.

XQ47. Did you carry Listerine?

A. I did.

XQ48. What other similar preparation did you carry that is just like Listerine?

A. The U. S. P. preparation Liquid Antiseptic.

XQ49. What other?

A. None that I remember.

XQ50. And if there was a call for Listerine and you were out of it, did you furnish the other?

A. I did not.

XQ51. Who first talked to you about testifying in this case?

A. Mr. Bradford.

XQ52. When and where?

A. In Memphis some time last winter.

XQ53. Who was with him?

A. Mr. Kelton.

XQ54. Had not Kelton talked to you about the case before?

A. He had not.

XQ55. Have you talked to Kelton about the case since then?

A. I have not.

XQ56. Have you come from Memphis to Indianapolis to testify in this case, and for no other purpose?

A. Yes.

XQ57. Under what arrangements?

Objected to as immaterial.

A. Mr. Bradford asked me if I could come up here and make this statement and I told him I could, if they would pay my expenses.

XQ58. Have you talked to any Lilly salesmen about the case?

A. No one save Mr. Winchester whom I came up here with, and only as above stated.

XQ59. Did Mr. Winchester arrange for your coming before you started?

A. We came from Memphis together.

XQ60. Have you been in the habit of buying goods from Winchester?

A. I have.

XQ61. Had you not ever talked about this case with Winchester?

A. I have not, until I got ready to come up here.

XQ62. And then did you tell him what you were going to testify to?

A. I never went into details with Mr. Winchester. He knew that I was coming up here and for what purpose.

XQ63. Didn't you tell him anything about what you were going to testify to?

Objected to as absolutely immaterial and irrelevant.

A. I have told Mr. Winchester just what I have stated here.

XQ64. When you were in business for yourself and a certain drug or preparation was called for over the counter and you did not have any of it, what did you do?

Objected to as immaterial and irrelevant.

A. Either sent out for it or did not make the sale.

XQ65. Do you state that that is absolutely true in every case?

A. I have stated there that I substituted Quin-Coco for Coco-Quinine, for the reason that both Mr. Kelton and Mr. Pfeiffer said that I could do so as they were one and the same thing, and that is the reason that I did so in that case. I did not do so in any other case that I can remember. And I did this because they told me so positively that it was all right to do so.

XQ66. Don't you know that there have been a great many drugs or preparations in your store made by different drug houses which are similar and one of which could be used for the other?

Objected to as irrelevant, immaterial and not cross-examination.

A. I do know that the manufacturer claims that to be a fact. However, I did not take their word for it.

XQ67. Did you carry Lacto Peptin and Elixir Lactated Pepsin?

Objection repeated.

A. I did.

XQ68. Are they not the same preparation pharmaceutically?

Same objection.

A. Perhaps they are, but I had prescriptions which called for Elixir Lactated Pepsin and I used Elixir Lactated Pepsin to fill them with.

XQ69. If you had a prescription for Lacto Peptin and you had none, what would you do if you had then in stock Elixir Lactated Pepsin?

Same objection.

A. Lacto Peptin and Elixir Lactated Pepsin are different preparations, one being a powder and one a liquid. Therefore, I could not use Elixir Lactated Pepsin for Lacto Peptin, even if I wished to do so.

XQ70. Don't you know that they both come in both powders and liquids?

Same objection.

A. Lacto Peptin is a powder and Elixir Lacto Pepsin is a liquid.

XQ71. Did you carry Elixir Lacto Pepsin?

Same objection and because the witness has already answered the same question.

A. I did.

XQ72. Did you carry Elixir Lactated Pepsin?

Same objection.

A. I did.

XQ73. If you had a prescription or a call for one of those and you were out of it, what did you do?

Objected to as immaterial, irrelevant and not cross-examination.

A. I either got it or did not fill it.

XQ74. Did you keep on hand Iodide Potassium Mercke?

Same objection.

A. I did.

XQ75. Did you keep any other make of it?

Same objection.

A. I did not specify on my orders for Iodide of Potassium, Mercke's, or any other special manufacturer.

XQ76. I asked you if you carried iodide of potassium made by any other house than Mercke?

Same objection.

A. I have had iodide of potassium in stock made by Mercke, also several other manufacturers.

XQ77. If you had a prescription specifying iodide of potassium with the name of the particular house and you were out of it, what did you do?

By Mr. Bradford: Objection repeated and protest made and surprise expressed that counsel will persist in this line of examination under the pretense of cross-examination when no foundation whatever was laid in the direct-examination for such questions.

By Mr. Rawle: Mr. Rawle states that the cross-examination is, in his opinion, quite justified.

A. I never saw a prescription where the physician specified any certain make of iodide of potassium. Iodide of potassium is the same chemical whether made by Mercke, or Mallancrock or any other manufacturer of chemicals.

XQ78. You have said before that you used Quin-Coco for Coco-Quinine because you were told that they were the same. Why then if a straight chemical drug

and the maker's name is specified and you do not have it, shouldn't you use the same drug of another make?

Objection repeated.

A. All chemicals, whether made by one manufacturer or another are the same, while pharmaceuticals differ.

XQ79. Then if a chemical of one house is specified and you don't have it you use the chemical of another house; is that correct?

Objected to as immaterial and not justified by anything the witness has said.

A. I never saw a chemical of the make of any certain house specified.

XQ80. But suppose that you did have a chemical specified with the name of the maker, and you were out of it, but you had an identical chemical of another house, what do you believe that you could properly do as a druggist?

Objected to as immaterial, incompetent and irrelevant, and not cross-examination.

A. I believe that I could properly use a chemical such as iodine of potash or similar chemical made by any reputable house.

XQ81. I think you said that you were now a prescription clerk. Is that right?

A. Yes, sir.

Cross-examination Closed.

Deposition Closed.

GUS. A. LAVISON.

Adjourned until tomorrow, October 24th, 1916, at 9 a. m.

928 John E. McCambridge.

Indianapolis, Indiana,
October 24, 1916—9 a. m.

Met pursuant to adjournment.

Parties present as before.

JOHN E. MCCAMBRIDGE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. John E. McCambridge; age 58; Chicago, Illinois; Chemist with G. D. Searle & Co., of Chicago, Illinois, manufacturers of physicians' supplies and pharmaceuticals.

Q2. Please state your experience as a pharmaceutical chemist and where you have been previously employed, and in what capacity?

A. I entered the service of Wm. R. Warner & Co., March 8, 1877, as bottle washer. In the fall of the same year the foreman retiring I got advanced to assistant laboratory man; I graduated from the Philadelphia College of Pharmacy, class of '79 and '80. In about May, 1880, I was given entire charge of the laboratory, which continued on up to the time of my severance with them in August, 1908, when the Pfeiffer Chemical Company took hold of the business. Since then I have been with the Standard Drug & Chemical Company, of Philadelphia, Pa., for a short time, and in December, 1908, came to Chicago, Ill., with the A. E. Remick Pharmacal Company. In September, 1911, I was then employed by G. D. Searle & Co., where I am at the present time.

Q3. Were you in charge of the laboratories of Wm. R. Warner & Co., in Philadelphia, during the year 1907

and during the year 1908, up to the time when your connection with that company was severed?

A. I was.

Q4. How long after the Pfeiffer Chemical Company took over the Wm. R. Warner & Co. was it before you severed your connection with them?

By Mr. Rawle: Mr. Rawle thinks it better to object here that the fact is not correctly stated in the question, but correctly appears elsewhere in this record.

A. About three weeks.

Q5. And up until that time, as I understand it, you were the superintendent and in charge of the laboratories having to do with the manufacture and experimenting on pharmaceuticals?

A. I was.

Q6. Do you know Mr. Harry Fritsch?

A. I do.

Q7. What position did Mr. Fritsch occupy during the two years prior to the severance of your connection with Wm. R. Warner & Co.?

The question is objected to and all other like questions relating to a period before the incorporation of Wm. R. Warner & Co., defendant.

A. In the manufacture of special formulæ and other liquid preparations of the house. He was a part of my force engaged as a workman under me.

Q8. Was he in charge of any part of the laboratory?

A. He simply had to make the preparations that were called upon to fill the stock.

Q9. Were you personally aware of the work done by Mr. Fritsch day by day and was it done under your superintendence?

A. I was and it was.

Q10. Mr. Fritsch when called as a witness for defendant in this case, testified that he experimented on

a tasteless syrup of chocolate quinine, trying to make a preparation similar to Coco-Quinine, Lilly, and that these experiments were conducted in the early part of 1908 and also in 1907. I refer to Mr. Fritsch's testimony beginning with XQ58, on page 466 of Defendant's Record. I ask you whether or not any such experiments were conducted in the laboratories of Wm. R. Warner & Co., in Philadelphia, during the early part of 1908 or during the year 1907?

By Mr. Rawle: Objected to as irrelevant and as antedating the formation of the defendant corporation at the time the Pfeiffer Chemical Company's interests became affiliated with the Wm. R. Warner & Co. business in Philadelphia, which the witness has stated to be August, 1908.

A. No such experiments were conducted.

Q11. Would it have been likely or possible that Mr. Fritsch could have carried on such experiments in the laboratory without your knowledge?

Same objection and as leading.

A. It would not.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ12. Fritsch has testified that he was an educated pharmacist, a graduate of the Philadelphia College of Pharmacy. You have testified that Fritsch was employed under you in the manufacture of special formulæ. Is all this correct?

A. It is.

XQ13. Was he a trained man?

A. He was.

XQ14. Do you remember Robert J. Groves in that concern at that time?

By Mr. Bradford: The question is objected to as not cross-examination.

A. I do.

XQ15. When you were superintendent of the laboratory in the old Warner firm in 1908 and 1907, were there not a number of experiments going on constantly?

A. There were not.

XQ16. Were there some?

A. No, none. In speaking now we are speaking of the laboratory department, known as the liquid department, not the pill department at all.

XQ17. Then you were not aware of any experiments in 1908 and 1907 in the laboratory department?

A. There were none.

XQ18. Were you not in 1908 and 1907, in the laboratory making up lots of different products of the Warner firm? I mean preparing lots or batches of their products for sale?

Objected to as immaterial and irrelevant.

A. We were, but not experimenting with new preparations.

XQ19. And there was a considerable number of these different products that you were thus making up for sale, were there not?

Same objection.

A. There were.

XQ20. Several hundred?

Same objection.

A. Part of my duty was to keep a record of all preparations made in the liquid department. Therefore, I knew exactly what was being done in that department.

XQ21. Are you not speaking now of turning out Warner products for sale?

Same objection.

A. I am.

XQ22. And what you call the laboratory of the

Warner concern was in fact a factory for the manufacture of its products, was it not?

Same objection.

A. It was.

Cross-examination Closed.

Deposition Closed.

JOHN E. McCAMBRIDGE.

Adjourned until tomorrow, October 25th, 1916, at 10 a. m., at Jefferson Hotel, St. Louis, Missouri.

By MR. RAWLE: Notice of motion to strike out the deposition taken at the last two sessions is given, for the reason set up in the various objections.

St. Louis, Missouri,
Hotel Jefferson,
October 25th, 1916—10 a. m.

Met pursuant to adjournment.

Parties present as before.

WILLIAM S. GARVIN, appearing in answer to a writ of subpoena issued on petition of plaintiff, as a witness on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. William S. Garvin; age 45; Webster Grove, a suburb of St. Louis, Missouri; Chemist with Wm. R. Warner & Co.

Mr. Rawle states that no notice has been given to him of the name of this witness and the witness

was subpoenaed from his place of business in St. Louis, within an hour past, and objects to the examination of this witness on behalf of the plaintiff. He also gives notice of a motion at the proper time to strike out any deposition he may give.

Mr. Bradford replies that his failure to notify counsel for defendant of the name of this witness was, first, because of the uncertainty surrounding the call of the witness, and further because the witness is an employee and part of the defendant organization, and he did not and does not believe that any notice was necessary or required.

Q2. What are your duties?

A. I am in charge of the laboratory of Wm. R. Warner & Co.

Q3. How long have you had charge of the laboratory?

A. Perhaps for—I will have to say that I really don't know.

Q4. Can you approximate?

A. I think eight years.

Q5. In your capacity as chemist in charge of the laboratories you superintend the experiments and other work in bringing out new preparations, I presume?

A. Yes, sir.

Q6. Mr. Garvin, your name has been used quite frequently in the testimony that has been given in this case both by witnesses for plaintiff and by witnesses for defendant. From the testimony in the case I judge that you were in charge of the work of bringing out a preparation for the Pfeiffer Chemical Company, an affiliated concern of the Wm. R. Warner & Co., known as Quin-Coco. I have had you subpoenaed as a witness merely that I might have the privilege of asking you to give your own statement respecting the history of this preparation, and for no other purpose. Will you tell us if you did the work incident to bringing out this

preparation and, if so, under whose direction it was done, and when?

By Mr. Rawle: The question is objected to so far as it is intended to bring out any facts occurring before the incorporation of the defendant company, Wm. R. Warner & Co., in Pennsylvania, which took place about July 28th, 1908. Any evidence in response to the question of any fact or transaction prior to that date is objected to.

A. I did that work. I am uncertain as to the time the work was done, and did the work by the direction of the company.

Q7. Who spoke for the company in giving you these directions?

A. Mr. Merner, I believe.

By Mr. Rawle: The questions and the answers are objected to and for the same reason, and unless the time of the transaction is fixed.

Q8. Did any one beside Mr. Merner ever talk with you about the matter on behalf of the company?

By Mr. Rawle: Objected to because "any one", and what any one said or may have said is not evidence, and because the statement to the witness in this connection by any person than an officer of the company is not evidence against the company. The only question that is proper in any case would be as to what a general officer of the company instructed the witness to do.

A. What do you mean by talking to me about the matter in behalf of the company?

Q9. I mean that either before you started on the work or during the progress of the work, did any one else, beside Mr. Merner, on behalf of the company, talk with you respecting this work?

By Mr. Rawle: Objected to unless the date of the talk was subsequent to the incorporation of

the defendant and because it appears by this record that Mr. Merner was the only general officer of the company resident in this Western Department of the business in St. Louis, after such incorporation.

A. Not to my recollection.

Q10. Did Mr. Henry Pfeiffer ever discuss the subject of Quin-Coco with you?

A. Not to my recollection.

Q11. Did Mr. G. A. Pfeiffer ever discuss the subject of Quin-Coco with you?

A. Not to my recollection.

Q12. When did Mr. Merner first bring up the subject and give you instructions?

A. I don't remember.

Q13. Do you remember ever seeing Mr. Henry Pfeiffer in the St. Louis laboratories?

A. Yes, sir.

Q14. Do you remember ever seeing Mr. G. A. Pfeiffer in the St. Louis laboratories?

A. Yes, sir.

Q15. You are personally acquainted with these gentlemen, I presume?

A. Yes, sir.

Q16. Was this work done after you became in charge of the laboratory?

A. Yes, sir.

Q17. What did Mr. Merner say to you on the subject when he first talked with you about it?

Objected to unless the date is fixed and it is shown to be after July 28th, 1908.

A. I don't know.

Q18. Do you remember anything that Mr. Merner said to you about it?

A. I could not attempt to quote Mr. Merner verbatim of course.

Q19. You are referring now I presume of course to Mr. G. D. Merner, who is present in this room?

A. Yes, sir.

Q20. Mr. Merner is your superior officer in the organization?

A. Yes, sir.

Q21. Can you tell me the substance of what Mr. Merner said?

Same objection.

A. Mr. Merner said to me that we would like to have a preparation generally known as a chocolate syrup of quinine.

Q22. Is that all that he said?

A. I could not answer further than that. He may have said more, I don't know.

Q23. Was Mr. Merner in charge of the St. Louis plant at that time?

A. Yes, sir.

Q24. Was anything said about the Lilly preparation known as Coco-Quinine?

Same objection.

A. I don't remember.

Q25. Did you have a bottle of the Lilly preparation in the laboratory while you were conducting your experiments?

Same objection and as irrelevant.

A. Later on; yes, sir.

Q26. What do you mean by "later on"?

A. You know you are asking me some questions that you have not coached me on, and hence I am answering only approximately, and to the best of my recollection and I take it that some time in the future after the first request it was gotten.

Q27. What use did you make of it, I mean the Lilly preparation?

Same objection.

A. Looked at it to see if the physical appearance of the sample on which I was working was somewhat similar to Lilly's.

Q28. Who assisted you in the work, if any one?

A. No one.

Q29. Where did you get the formula from which the preparation was made?

Same objection as to time of the transaction.

A. The formula is one which we—I would just like to state that differently—as first made, the formula was supplied to me by Mr. Merner.

Q30. Where was it obtained by Mr. Merner and from whom?

Same objection and because it does not appear that the witness had knowledge of the fact, if there be such a fact.

Mr. Bradford objects to the objection, it being improper for counsel to suggest answers to witness, particularly when witness is antagonistic to plaintiff and a part of the defendant organization.

Mr. Rawle replies that he is objecting and not suggesting.

By Mr. Bradford: Mr. Rawle's objection speaks for itself.

A. I don't know.

Q31. Did you ever hear it stated by any one where the formula was obtained?

By Mr. Rawle: Objected to as calling for bald hearsay and for the other reasons above given.

The Examiner is requested to instruct the witness that he can not give hearsay evidence, or testify to what somebody has told him unless it being an officer of the corporation.

By Mr. Bradford: The Examiner is without authority to instruct the witnes in any particular, as counsel should know, if he does not, and his presumption in asking the Examiner to do this is inexcusable. These questions are questions for the

determination of the court and the court only. The Examiner has no authority to assume the functions of the court. Moreover the question does not call for hearsay, but for the witness' own knowledge of a fact, if it be a fact.

A. No, sir.

Q32. It has been stated by some witnesses that representatives of Wm. R. Warner & Co. have solicited their orders for Quin-Coco on the assurance that it was the same thing as Coco-Quinine, and must be the same thing as Coco-Quinine, because it was made from the original Lilly formula, either by a chemist or obtained from a chemist formerly employed in the Lilly laboratories. Do you know anything as to this, and, if you do, please state what you know?

By Mr. Rawle: Objected to because the preliminary statements made by counsel in the question are irregular and improper; because the statements are erroneous in fact; because the question calls for a statement by the witness of mere hearsay, and because the time inquired of is not subsequent to the formation of the defendant corporation. Also because the question is irrelevant and immaterial and inadmissible.

A. I do not.

Q33. In your answers where you have said that you do not remember and can not say, such as your answer to the question as to whether Mr. G. A. Pfeiffer ever talked with you on this subject, do you wish to be understood as denying that he ever talked with you on the subject, or merely that you do not care to answer?

A. I mean that to the best of my recollection Mr. Pfeiffer never talked with me in regard to the manipulation of this product.

Q34. Mr. G. A. Pfeiffer was frequently in the St. Louis laboratories, was he not?

A. Yes, sir.

Q35. And knew what was going on in the laboratories?

The question is objected to for the same element of time.

A. Yes, sir.

Q36. As a matter of fact did not Mr. G. A. Pfeiffer take a good deal of interest in the work of the laboratories, particuraly on new preparations?

A. Yes, sir.

Q37. He undoubtedly then knew that this work was progressing in the laboratories?

A. Yes, sir.

Q38. I presume the same is true of Mr. Henry Pfeiffer, is it not?

A. No, sir.

Q39. He would not be in the laboratories so much?

A. Not so much.

Q40. Some of the witnesses have given your name as Garwin and some as Garvin. The correct spelling is Garvin, is it not?

A. Yes, sir.

Direct-examination Closed.

No cross-examination.

Q41. Do you remember the date when you went to Philadelphia to advise with Mr. Fritsch and instruct him how to make this preparation? If so, when was it?

A. I don't.

Deposition Closed.

WILLIAM S. GARVIN.

ARDIE ODELL, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Ardie Odell; age 32; Union, Missouri; retail druggist. I have been a retail druggist at Union, five years in February. Prior to that time I was a traveling salesman for Meyer Brothers Drug Company, the Norwich Pharmacal Company and Wm. R. Warner & Co. I worked for Meyer Brothers about four years, for Wm. R. Warner & Co., I think it was about a year, and for the Norwich Pharmacal Company about six months.

Q2. Do you remember the year that you worked for Wm. R. Warner & Co.?

A. I don't remember the year; no, sir.

Q3. About how long ago?

A. About six years ago.

Q4. As traveling salesman for Wm. R. Warner & Co., did you handle their entire line?

A. Their line at that time.

Q5. Did you have a preparation in the line, known as Quin-Coco?

A. Yes, sir.

Q6. On what representations did you solicit orders for this item Quin-Coco, and by whose instructions?

By Mr. Rawle: Objected to as not rebuttal.

A. I sold it Quin-Coco for Coco-Quinine, but it was nobody's instructions.

Q7. Did any one from the house ever travel with you or give you any instructions or information in reference to this item, and how you could sell it?

By Mr. Rawle: Same objection.

A. Mr. Henry Ritayik traveled with me for, I think it was one week or two weeks, during the time I was with them. I think it was one week, and read to me instructions that he had in the book about selling pharmaceuticals, and rules of the house.

Q8. Did Mr. Ritayik ever say anything to you about selling Quin-Coco as a substitute for Lilly's Coco-Quinine?

By Mr. Rawle: Objected to as not rebuttal and as leading.

A. He said that we have a preparation of Quin-Coco which is to take the place of Coco-Quinine.

Q9. I show you a written statement and ask you if this is by you?

A. That is my signature; yes, sir. That has never been sworn to before a Notary Public and Mr. Kahre told me that he wanted to get something about like that and I told him at the time just what I have testified here, that he mentioned Quin-Coco in place of Coco-Quinine. That has never been sworn to before a Notary Public.

Q10. This statement reads as follows:

"Union, Mo., July 24th, 1916.

I, Ardie Odell while in the employ of Pfeiffer Chemical Co. (Wm. R. Warner) of St. Louis, as salesman, was instructed by Henry Retighe, General Specialty man, to sell Quin-Coco as a substitute for Lilly's Coco-Quinine. It was Mr. Retighe's duty to travel with and instruct the road men, one selling the entire line.

These instructions were given on one of these trips.

Yours very truly,

Ardie Odell."

And I ask you if any part of this statement is not true? If so, what is it?

By Mr. Rawle: I object to any use of the written statement either for the purpose of supporting the testimony of the witness or for impeaching his testimony already given, or for any other purpose. I object to placing the witness' statement on the record, which objection I sought to make before it had been so placed, but was refused, by opposing counsel until it has been written in the record. The question is also objected to as not rebuttal.

By Mr. Bradford: Mr. Bradford did refuse to have his question interrupted and an objection

interposed in the midst of it, an unheard-of procedure so far as he is aware in this method of taking testimony. The objection is of the same force and effect following the completed question as it could have been or would have been in the middle of the question. Mr. Rawle could not properly object to the question until the question was asked.

By Mr. Rawle: I sought to interpose my objection before any question was put.

By Mr. Bradford: Mr. Rawle is mistaken for I had begun my question and reached the point where I handed the Examiner the letter to be copied into the question, before Mr. Rawle opened his mouth to interpose his objection.

A. He merely made the statement to me this, to sell Quin-Coco against Coco-Quinine, Lilly. That was all it was.

Q11. In what particular is the letter of July 24th, 1916, inconsistent with what Mr. Ritayik actually told you, if in any?

By Mr. Rawle: The same objections are repeated; also because the witness has fully answered the question, and his further examination on this writing is doubly objected to.

A. Mr. Kahre put this down here and said this is about something like it and at the time Mr. Kahre told me if it was anything about like that this testimony would, the chances were, not be used, if it was anything like it, and informed me that I did not have to go before a Notary Public and swear to it, and I told him that to the best of my knowledge that he did not instruct me that but talked Quin-Coco and Coco-Quinine.

Q12. In selling Quin-Coco did you follow Mr. Ritayik's instructions as you understood them?

Objected to as not rebuttal.

A. No, I was out after orders and sold quinine, and talked Coco-Quinine, chocolate quinine.

Q13. How did Mr. Ritayik talk the subject with the druggists?

Objected to as not rebuttal.

A. The time he was with me Mr. Ritayik worked very little on pharmaceuticals, his line was on non-secret lines. He would work the druggists more and I would very seldom hear him talk to the druggists on Quin-Coco or Coco-Quinine. His line was on the Hobson line and the non-secrets the Pfeiffer Chemical Company put up at that time. He had the line at that time of non-secrets and worked druggists mostly.

Q14. When he did mention Quin-Coco or Coco-Quinine, what did he say about them?

By Mr. Rawle: Objected to as not rebuttal.

A. I don't remember of ever hearing him mentioning Quin-Coco, while he was with me. He was with me one week or two weeks, I am not positive, but I think it was one week one trip.

Q15. You have already stated in answer to a previous question that he told you to sell Quin-Coco against Coco-Quinine.

By Mr. Rawle: Objected to as not rebuttal, and because the question attempts to induce the witness to change his answers already given and to impeach the witness.

By Mr. Bradford: The objection is unjustified, for the reason that the question is not for any such purpose as that stated, but merely to give the witness an opportunity to make his testimony consistent. It is presumed that the witness in his last answer meant that he can not remember of Mr. Ritayik mentioning this particular item in his talk with retail druggists and since counsel has by his objection raised this point this explanation is made of the last question propounded to witness.

It is simply to give him an opportunity to explain what might be considered an inconsistency between two of his answers.

A. He informed me that we make Quin-Coco and Lilly makes Coco-Quinine and he said we sell Quin-Coco against Lilly's Coco-Quinine. We call it Quin-Coco not chocolate quinine, are the words I believe he said to me on the trip.

Q16. Then I assume that in your answer where you said you did not remember of hearing Mr. Ritayik mention Quin-Coco that you had in mind his conversations with retail druggists and not his conversations with you personally. Is this so?

By Mr. Rawle: Objected to as not rebuttal, as leading, as an effort to impeach the plaintiff's own witness, and as in all respects entirely inadmissible, in the examination of a witness not shown to be hostile.

A. No, sir.

Q17. Explain then what you did mean when you said you did not remember ever hearing him mention Quin-Coco?

Same objection.

A. I don't remember hearing him say anything to retail druggists about Quin-Coco.

Q18. But you do remember that he mentioned it to you as above stated?

Same objections.

A. Yes, sir.

Q19. Do you know Mr. G. D. Merner, who is sitting near you in the room?

A. Yes, sir.

Q20. How long have you known Mr. Merner?

A. About six years and a half.

Q21. What are your relations to Mr. Merner?

A. Nothing whatever, only friends.

Q22. You were not aware that Mr. Merner was to be present during this examination, when you talked with me about this case in the lobby of the hotel just prior to testifying, were you?

By Mr. Rawle: The last two questions are objected to as inadmissible.

A. I did not care. No, sir.

Q23. As a retail druggist do you have dealings with Mr. Merner's house?

Same objections.

A. Yes, sir.

Q24. What is the condition of your account with them at this time?

Same objection and because the question tends to impeach the plaintiff's own witness, and being inadmissible.

A. I do not think that I owe them anything for goods that the bill has yet become due.

Q25. What is the reason that your answers to my questions have not been as frank and full as they were during the few moments we talked about the matter before you were brought into the room to testify, if there is any reason?

Objected to as inadmissible and irregular.

A. No reason whatever.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

By Mr. Rawle: Notice is given of motion to strike out parts of the deposition which have been objected to as not proper for rebuttal.

XQ26. Who is Mr. Kahre, whose name has been mentioned?

A. He is the manager of the Eli Lilly branch here in St. Louis.

Re-direct-examination.

By MR. BRADFORD:

RDQ27. How long have you known Mr. Kahre?

A. About twelve years.

RDQ28. How did this subject come up between you and Mr. Kahre?

By MR. RAWLE: Objected to as not proper rebuttal and as not re-direct-examination and as inadmissible.

A. I was talking to Mr. Nowl, a representative of Eli Lilly, traveling salesman, who calls at my store, and I asked him how the suit had come out and he told me to write to Kahre and ask him, and I did

ARDIE ODELL.

By MR. BRADFORD: The letter of July 24th, 1916, referred to by the witness, is offered in evidence and marked "Plaintiff's Exhibit, Odell Letter".

By MR. RAWLE: The offer is objected to as inadmissible and as an attempt to impeach the plaintiff's own witness, who is not shown to be hostile.

Deposition Closed.

JOHN VAN DALE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. John Van Dale; age 48; 5353A Minerva Avenue, St. Louis, Missouri; salesman of Meyer & Van Dale's perfumes. I have been associated with the firm

of Meyer & Van Dale for four years last September, since September 1st, 1912; prior to that time I was employed as traveling salesman for the Pfeiffer Chemical Company and Wm. R. Warner & Co., for five years, handling their general line of drugs and pharmaceuticals and perfumes. I covered St. Louis and East St. Louis.

Q2. Did you have in your line a preparation known as Quin-Coco?

A. Yes, sir.

Q3. When did you first become acquainted with this preparation and under what circumstances?

A. I was selling Quin-Coco from the first day I was employed by the Pfeiffer Chemical Company. I was speaking to Mr. Thurman one day when we were on a little bridge between the three different buildings of the Pfeiffer Chemical Company, along about quarter of twelve. Mr. Thurman seemed to be dissatisfied with his position. I don't remember what transaction it was on the bridge about what his general business was with the Pfeiffer Chemical Company. Then we walked up stairs in the third story. Mr. Thurman and I and Mr. Garvin were standing at the table and there were two pieces of white paper on the table with two different preparations and I was asked if I could tell the difference between the two, and I said yes, one preparation looked a little bit thinner than the other and the color was a little bit different. That was all that was said to me.

By Mr. Rawle: Objected to as not rebuttal, as irrelevant and as hearsay.

Q4. Who asked you this question?

Same objection.

A. Mr. Garvin.

Q5. What were the two preparations?

A. I suppose one was Quin-Coco and the other was Coco-Quinine.

Q6. What did Mr. Garvin say about them?

By Mr. Rawle: Same objections and because what Mr. Garvin said is not relevant or admissible.

A. He says, are there any difference.

Q7. And you examined them with a critical eye for the purpose of detecting a difference, if you could, did you?

By Mr. Rawle: Same objection and as leading.

A. Yes.

Q8. Did Mr. Garvin tell you that one preparation was Coco-Quinine and the other Quin-Coco?

Same objections.

A. I don't remember that.

Q9. Were the bottles of the two preparations present?

A. I don't think there were.

Q10. How did Mr. Garvin happen to introduce the subject, or did you introduce it?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant and because what Garvin did is not evidence.

A. Mr. Garvin had it on the paper and we were passing by and we happened to notice this. I can't remember the conversation, but I don't know who said Quin-Coco or Coco-Quinine, but I looked at the preparation and Thurman and I commenced talking about Coco-Quinine and Quin-Coco. And I said to him that there was a difference in consistency and in the color.

Q11. Do you remember what Mr. Garvin said in response to this, if anything?

By Mr. Rawle: Objected to as irrelevant and inadmissible.

A. I do not.

Q12. Did he at any time contend that they were the same?

By Mr. Rawle: Same objections and as leading.

A. He did not decide one way or the other.

Q13. He merely asked your opinion?

Same objection.

A. I told him there was a difference in the two preparations and that is all.

Q14. I show you a card and ask you if you recognize it, and, if you do, what it is?

By Mr. Rawle: Objected to because the card has not been shown to opposing counsel.

A. I do recognize it. It is a perfume card.

By Mr. Bradford: Counsel for plaintiff invites counsel for defendant to inspect the card which he now hands to him.

Q15. What kind of a perfume card?

A. That is the price list of different manufacturer's makes, and the name of the different odors to replace with, the facsimile odors.

Q16. Do you know what house issued this card?

By Mr. Rawle: This question and the preceding questions relating to this card are objected to as irrelevant, inadmissible and not rebuttal.

A. I got one with my price list with the different preparations that I sold for the Pfeiffer Chemical Company.

Q17. Get it from the Pfeiffer Chemical Company?

Same objections.

A. With my price list from the Pfeiffer Chemical Company.

Q18. What is the significance of the numbers corresponding to each other on opposite sides of the card?

By Mr. Rawle: Same objections.

A. The number "Florita" is an odor facsimile to "Janice", and so on throughout the list, like "Vogue" is for "Jickey".

Q19. Then if I understand you correctly No. 1 on the side of the card with "Vogue" at the top is a facsimile of No. 1, on the opposite side, and the same is true of each of the other numbers on the "Vogue" side when compared with corresponding numbers on the "Jickey" side?

A. Yes, sir.

By Mr. Bradford: The card just referred to is offered in evidence and marked "Plaintiff's Exhibit, Defendant's Perfume Card".

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ20. That day you were on the bridge with Thurman, was that in 1907 soon after you went to the Pfeiffer Chemical Company?

A. No, I don't know what year; it was either in 1908 or 1909.

XQ21. How long had you been with the Pfeiffer Chemical Company when that happened?

A. It was a year or may be two years, I am not quite sure. I think it was in 1909.

XQ22. Before that talk with Thurman had you been selling Quin-Coco?

A. Yes, sir.

XQ23. From a salesman's demonstration book?

By Mr. Bradford: Objected to as not cross-examination.

A. No, sir; from a vial case.

XQ24. I mean did you as a Pfeiffer Chemical Company salesman and as part of your outfit carry with you a blank book having labels of your various products pasted into the book?

Same objection.

A. Yes, sir.

XQ25. Who first talked to you about testifying in this case?

A. I was called up over the 'phone and asked if I would not come down to the Jefferson Hotel and asked if I worked for the Pfeiffer Chemical Company. I was asked to come and meet Mr. Bradford. This was last December.

XQ26. Have you since talked with any Lilly salesman about the case?

A. No, sir.

Deposition Closed.

JOHN VAN DALE.

RUDOLPH A. MEYER, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Rudolph Meyer; age 49; St. Louis, Mo.; perfume manufacturer, a member of the firm of Meyer & Van Dale. We have been in this business since the first of September, 1912. Prior to that time I was the perfume manufacturer for Wm. R. Warner & Co., and the Pfeiffer Chemical Company, up to about May 10th, 1912, and since 12th of November, 1904, when I started my services for the Pfeiffer Chemical Company.

Q2. I show you a card marked "Plaintiff's Exhibit, Defendant's Perfume Card", and ask you if you recognize the same and what it is?

A. Sure, I recognize it, I know that card all right. It is a card issued by my former employers, the Wm. R. Warner & Co., and the Pfeiffer Chemical Company. It shows on one side their perfumes and on the other side the competitive brands.

Q3. Which side represents the Warner-Pfeiffer line of perfumes?

A. The side headed by the name "Vogue".

Q4. Which perfumes do you recognize as the first or original? Those on the "Vogue" side of the card or those on the side of the card headed "Jickey"?

By Mr. Rawle: Mr. Rawle objects to the question and to the preceding questions as not rebuttal and as irrelevant and inadmissible.

A. Yes, the one on the side headed "Guerlain's Jickey". That is the "Jickey" made by the original. Guerlain is the original Paris house.

Q5. Were these several perfumes on the side of the card headed "Vogue" all made by you?

A. Yes, sir.

Q6. And while you were in the employ of Wm. R. Warner & Co. and the Pfeiffer Chemical Company?

A. Yes, sir.

Q7. By whose instructions were these perfumes made?

By Mr. Rawle: Objected to as not rebuttal, as irrelevant and inadmissible.

A. By my employers.

Q8. What individual or individuals, if you recall?

Same objections.

A. Some of those perfumes I was directed to make when I was still with the Mellier Drug Company, the former owners of Mellier's perfumes, and others were made by the then owners, Messrs. Pfeiffer and their successors and present owners of Mellier's perfumes. That is what I was paid for.

Q9. What would one of the Messrs. Pfeiffer, or either of your other employers, say to you when asking you to make a perfume, such as any one of these listed on this card?

By Mr. Rawle: Same objections.

A. They would bring me the report of some of their salesmen, to the effect that such and such an odor has a good sale; such and such an odor from another concern would have a very good sale, and that it would help our perfume business by reproducing it as faithfully as possible in a competitive article, meaning, of course, substitute our perfume with a somewhat similar name or may be a different name (as the name "Vogue" is entirely different from "Jickey") for the original perfume.

Q10. Would they bring you a sample of the original perfume to work from?

A. They would bring an original package or sample of the competitive brand, or original brand.

Q11. I show you another card and ask you if you know what it is?

A. Yes, this is another one; the same thing, except it may have a few more items on it; probably issued later.

By Mr. Rawle: The question and answer is objected to for the same reason.

Q12. Did the Warner salesmen obtain from you any information or instructions respecting these perfumes that you made?

A. They did.

Q13. What instructions would you give them?

Same objections.

A. I would point out to them that here is an article, a perfume, fully equal, if not superior to the genuine, and offer it as such to the trade.

Q14. Did you instruct them or give them any means of remembering which of your perfumes corresponded to the originals? If so, what?

Same objections.

A. To some of the older salesmen we would simply give the aforesaid cards, and as I remember, often I would personally take out price lists and mark the competitive brand in writing behind the name of our brand.

Q15. Were your brands usually sold for lower prices than the originals?

Same objections.

A. Yes, sir. The cards aforesaid show this very plainly.

The card referred to in Q11 is offered in evidence and marked "Plaintiff's Exhibit, Defendant's Perfume Card B."

Direct-examination closed.

Notice of motion to strike out is here given by Mr. Rawle.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ16. How long did you say you worked for Mellier?

A. Eight years. Then the Pfeiffer Chemical Company took over the perfume department of the Mellier Drug Company and I went with the Pfeiffer Chemical Company at that time.

XQ17. Look at the yellow list, "Plaintiff's Exhibit, Defendant's Perfume Card B," and state which items were put out on the market by the Mellier Drug Company before it passed over into the Pfeiffer Chemical Company?

A. To the best of my recollection they are three on this list put out by the Pfeiffer's, namely, "Oriana," "Forest Roses" and "Locust Bloom." "Locust Bloom," I believe, was originated when Pfeiffer took succession. As to Locust Bloom, I am a little uncertain as to whether it was put out before or after.

XQ18. And all the others on the list except those three were originally put out by the Mellier Drug Company before the Pfeiffers took it over?

A. Yes.

XQ19. And perhaps "Locust Bloom" was?

A. Yes.

XQ20. I have always understood that Frangipanni and Jockey Club were common names of perfumes used by a number of perfumers. Is that right?

A. So they were, and still are.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ21. Do you have——

By Mr. Rawle (interrupting):

XQ21. Do you market Frangipanni and Jockey Club now?

A. Yes.

By Mr. Rawle: That is all.

Re-direct-examination.

By Mr. Bradford:

RDQ22. I started to ask do you have any records that will show what perfumes in this list were made by you after the Mellier line was taken over by the Pfeiffer Chemical Company?

A. I have records, but they are generally written so I only can read them, in my formula book.

RDQ23. The answers given above, as I understand it, are wholly from memory. I mean in respect of the two perfumes "Oriana" and "Forest Roses" being probably the only ones you made after the Pfeiffers took over the Mellier line.

A. I can prove it, not only by memory, but my formula books that I started to make them on such and such a date.

RDQ24. Will you examine your formula books after you go home and check up the matter and see if there were any other items on this list made by you after the Pfeiffers took control.

A. I will.

By Mr. Bradford: I ask counsel for defendant if he will consent that witness may correct his deposition if when he examines his records he finds his memory has been at fault without the necessity of recalling him.

By Mr. Rawle: Mr. Rawle prefers that the matter should take its regular course. The witness has expressed no doubt as to his full recollection except as to "Locust Bloom."

Deposition closed.

Rudolph A. Meyer.

Adjourned to meet at Bancroft Hotel, Saginaw, Michigan, October 26th, 1916.

Saginaw, Michigan,
Bancroft Hotel,
October 26th, 1916, 10 P. M.

Met pursuant to adjournment, and by agreement of counsel.

Parties present as before.

William Heim, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. William Heim; aged 55; Saginaw, Michigan; pharmacist and analytical chemist, proprietor of a retail drug store at 101 Janes Avenue, Saginaw, Michigan, successor to H. & W. Heim. I have been in the pharmaceutical business since 1884.

Q2. Do you know Mr. H. E. Starring, a traveling salesman for Wm. R. Warner & Co.?

A. Yes, sir.

Q3. Has Mr. Starring solicited orders from you for the Warner line of Pharmaceuticals, and among other items for an item called Quin-Coco?

By Mr. Rawle: Objected to as not rebuttal.

A. Yes, sir.

Q4. What representations did Mr. Starring make about this item in soliciting your order for the same?

Same objection, and because the only proper question is as to what was said.

A. He stated that it was the same as Coco-Quinine, that the price was less, that it flowed better, being a slightly thinner liquid, and that most of the boys were buying it and selling it in place of Coco-Quinine.

Q5. Do you handle Coco-Quinine at your store?

A. Yes, sir.

Q6. Have you ever had a prescription written for Quin-Coco?

Objected to as not rebuttal.

A. No, sir.

Q7. Have you ever had a customer call for Quin-Coco?

Same objection.

A. No, sir.

Q8. By what name is this character of preparation prescribed and called for, so far as your personal experience goes?

A. It is always called for as "Coco-Quinine".

Q9. Mr. Starring, in a deposition, stated that it was called for as "Baby Tonic" and as "Chocolate Quinine" in this territory. What have you to say as to this?

A. We never had anybody call for it under those names.

Q10. Did Mr. Starring make any statement to you

as to how you could dispense his preparation, Quin-Coco, and if so, what did he say?

By Mr. Rawle: Objected to as not rebuttal, as leading, and as already asked of the witness in Q4.

A. He simply said that it was the same; that it flowed a little better, and that the boys were all using it; that most of the boys were using it.

Q11. For what?

Objected to for the same reasons, and because the witness has already answered the question in answer to Q4, where he stated "In place of Coco-Quinine."

A. For Coco-Quinine.

Q12. Did Mr. Starring interview you more than once on this subject?

Objected to as not rebuttal.

A. Yes, sir.

Q13. About how many times?

Same objection.

A. During 1915 every time he came. I don't know whether he comes up three times or whether he comes four times.

Q14. Did he make the same representations each time?

Objected to as not proper for rebuttal, as leading, and because the only proper question is as to what was said by the person in question.

A. Yes, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ15. With whom did you first talk about testifying in this case, and when?

A. With Mr. Martin, about April or May last. Mr. Martin is a Lilly salesman. I think he is now in this hotel. I had a talk with him in Mr. Bradford's room within the last half hour.

XQ16. Testimony was taken in Saginaw, on behalf of plaintiff, early in the spring of 1915. Were you asked to testify at that time, or did any person connected with the Lilly Company speak to you about the case or about what Starring had said to you?

A. The time that Mr. Martin saw me he asked me about it; that, of course, was not in 1915; that was this summer, the only time he ever said anything to me about the case.

XQ17. For how many years has Martin, as a Lilly salesman, been calling on you at your drug store and soliciting your trade?

By Mr. Bradford: Objected to as immaterial and irrelevant.

A. I should say for the last five or six years.

XQ18. About how often each year?

Same objection.

A. I should say about four times during the year.

XQ19. Have you been in the habit of buying any of Starring's line of preparations?

A. Only so-called proprietary medicines, which they bought from other firms; they bought out these firms, these so-called proprietary medicines.

XQ20. Have you found him square in his dealings?

Previous objection repeated.

A. Yes, sir.

XQ21. Do you remember that when he was soliciting your trade he had a blank book with various labels of his line pasted in it, and that you turned over the leaves in that blank book as he talked to you?

Same objection, and as not cross-examination.

A. He had a book with the proprietary labels

pasted in, the medicines that they put up and others that they bought. That is the book that I looked over.

XQ22. Have you had calls for this character of preparation by other names, such as "Chocolate Syrup of Quinine" or "Chocolate Quinine" or "Sweet Quinine"?

A. No, sir.

Deposition closed.

WILLIAM HEIM.

By MR. RAWLE: Notice is given of motion to strike out this deposition for the reasons given in objections.

MARTIN A. KESSEL, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Martin A. Kessel; age 26; Saginaw, Michigan; pharmacist, proprietor of retail drug store, located at 2346 South Michigan Avenue, Saginaw, Michigan. I have had this store about four years and a half. Prior to that time I worked in the drug store of Fowly & Co., at Bay City, Michigan, for one year; prior to that I worked in a drug store at Saginaw, Michigan, for Mr. Richter, for four years; prior to that I was with the Michigan Drug Company, in Saginaw, Mich., for nine months; before that I worked in a few other drug stores. I have been in the retail drug business about thirteen years.

Q2. Did you ever know a man by the name of Charles S. Rogers, a traveling salesman for Wm. R. Warner & Co.? If so, when did you know him?

A. Yes, I did, about three years ago, about that time.

Q3. Did Mr. Rogers call on you and solicit your orders for his line of goods?

A. Yes, he did.

By Mr. Rawle: Objected to as not proper for rebuttal.

Q4. Among other items, did Mr. Rogers solicit your order for an item called "Quin-Coco", and if he did what did he say to you about this preparation?

Same objection.

A. Yes, he did. He said that it was very similar to Coco-Quinine and had the same amount of quinine in it, two grains to the teaspoonful, and that it could be sold as Coco-Quinine; that the price of it being much lower than Coco-Quinine it would be more profitable to use it.

Q5. About when was this, or if the same representations were made at different interviews, how many were there and when did they occur, approximately?

Same objection.

A. The first time about three years ago, and at intervals of four months. On each occasion he would make the same remarks about Coco-Quinine and Quin-Coco.

Q6. Did you buy Quin-Coco?

A. That is the only preparation of that kind that I have bought since that time.

Q7. How have you been selling it?

Same objection, and as irrelevant and because the acts of the witness do not affect the rights of the defendant.

A. I have been selling it over the counter and also by prescriptions.

Q8. Under what kind of a label have you sold it over the counter?

Same objections.

A. Coco-Quinine.

Q9. On what kind of prescriptions have you sold it?

Same objections.

A. On prescriptions for Coco-Quinine.

Q10. Do you know Mr. H. E. Starring, another traveling salesman for Wm. R. Warner & Co., and if so, how long have you known him?

A. Yes, sir; about two years.

Q11. Has Mr. Starring ever solicited your order for Quin-Coco, and if so, what did he say to you about this preparation?

Objected to as not proper for rebuttal.

A. Yes, he did. He said the same thing that Mr. Rogers did.

Q12. And have you continued buying it from Starring since he has been in this territory?

A. Yes, I have.

Q13. Did you ever have a call for Quin-Coco at your store?

Objected to as not rebuttal and as irrelevant.

A. No, I did not.

Q14. Have you ever seen a prescription written for Quin-Coco?

Same objection.

A. No, I have not.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ15. What person connected with Eli Lilly & Co. first spoke to you on this subject about Starring or Rogers, or about testifying in this case?

A. Mr. Martin, a representative of Eli Lilly & Co.

XQ16. When first?

A. I think it was last fall, a year ago.

XQ17. For how many years has Martin as a Lilly salesman been soliciting your drug trade in Saginaw?

A. Four years that I know of. He comes about every two months.

XQ18. Have you seen him in Saginaw today?

A. Not until tonight at the hotel here, within the last half hour.

XQ19. Since Starring began to solicit your trade for the Warner line how many times has he called on you?

A. About four times.

XQ20. How many times did Rogers call on you?

A. About six times.

XQ21. Had you bought Quin-Coco from Rogers?

A. Yes, sir.

XQ22. At his first call?

A. No, I think I did not take it the first time but did on his next trip.

XQ23. And you have carried it in stock ever since then until now?

A. Yes, sir; I have.

XQ24. Are you quite sure that Martin did not talk to you about your buying Quin-Coco and about how you sold it, as early as April of 1915?

A. Yes, he did.

XQ25. In the early part of 1915?

A. Yes.

XQ26. Did you tell him then that you had been carrying Quin-Coco and selling it for Coco-Quinine.

A. Yes, I did.

XQ27. Do you think this is honest or ethical as a druggist?

By Mr. Bradford: Objected to as immaterial.

A. I think it is all right, because the Warner salesman said it contained the same amount of quinine, and that is the active principle in the preparation.

XQ28. Have you any other drugs or preparations

on your shelves of which you carry two different makes but both containing the same active principles?

By Mr. Bradford: Objected to as immaterial, irrelevant and not cross-examination.

A. Yes, a few, such as lactated pepsin and essence of pepsin.

XQ29. Mention others.

Same objection.

A. Hayden's viburdum compound. That is all I can remember now.

XQ30. Have you some drugs or preparations on your shelves made by one house as to which there are drugs made by other houses with the same active principle but which you do not carry in stock?

Same objection.

A. Oh yes, there are so many of them that we could not carry them all.

XQ31. In such case if there is a call for one of these but of a make which you don't carry, do you use in its place the one which you do carry?

Same objection.

A. We generally use the original one but we substitute if we think it is reasonable.

XQ32. When Rogers asked you to buy Quin-Coco did he say that it was similar to Coco-Quinine, contained the same amount of quinine—two grains to the teaspoonful—and that the price was lower, and is that the substance of what he said?

By Mr. Bradford: Objected to as an inaccurate statement of what the witness has already testified to, and as an improper question for this reason.

A. Yes, sir.

XQ33. And is that the substance of what Starring afterwards said?

Same objection.

A. Yes, sir.

XQ34. Under what different names do you have calls for a chocolate or a sweet chocolate preparation of quinine?

A. Most of them were Coco-Quinine and chocolate quinine.

XQ35. Any others?

A. That is all.

XQ36. What proportion of them were for chocolate quinine?

A. Very few.

XQ37. About how many drug stores are there in Saginaw?

Objected to as immaterial.

A. Between twenty and twenty-five.

XQ38. When Rogers solicited your trade did he have a blank book with the labels of his line pasted in it and go through it with you, turning over the leaves?

Objected to as immaterial, incompetent and irrelevant, and as not cross-examination.

A. Yes, he did.

XQ39. And Starring the same?

Same objection.

A. Yes.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ40. About how long ago was it that Mr. Martin first asked you if you would testify in this case?

A. About six or seven months ago.

RDQ41. That would be some time last Spring?

A. Yes, sir.

RDQ42. How long prior to that time had Mr. Martin talked with you about using Quin-Coco?

By Mr. Rawle: Objected to as not proper for re-direct, the matter having been fully gone into.

A. About four months before that.

RDQ43. Was that the first time Mr. Martin spoke to you about it?

A. It might have been before that. I don't remember.

RDQ44. When Mr. Rawle asked you in XQ16 when Mr. Martin first spoke to you about it you answered "I think it was last Fall, a year ago." Then in XQ24 he asked you if Mr. Martin did not talk to you about it as early as April of 1915, which would be a year ago last Spring, you answered that he did. Is this correct or did you make a mistake in the year?

Objected to as not proper re-direct-examination and as leading.

A. There have been so many dates referred to that I might have made a mistake in the time.

RDQ45. What is your best recollection as to the date when he first talked with you about the subject and then as to the date when he spoke to you about testifying?

Objected to as not re-direct-examination.

A. The first time he talked to me about the subject was about October or November, a year ago. Then he asked me if I would testify in this case some time the latter part of April, 1916.

RDQ46. In selling Quin-Coco as Coco-Quinine and labeled Coco-Quinine were you or were you not following the teachings and instructions of Mr. Rogers in this respect?

Objected to as not rebuttal, as leading and because the question calls for an inference instead of for a statement of fact, as not proper for re-direct-

examination, and as entirely irregular and inadmissible from every point of view.

A. I might say yes.

Deposition closed.

M. A. KESSEL.

Adjourned until tomorrow, October 27th, 1916, at 10 A. M., at same place.

Saginaw, Michigan.
Bancroft Hotel,
October 27th, 1916, 10 A. M.

Met pursuant to adjournment.

Parties present as before.

MR. BRADFORD states to Mr. Rawle that he will call no other witnesses in Saginaw today and further taking of testimony is therefore adjourned to Detroit, Michigan, at the Ponchartrain Hotel, at such time as will be agreed upon between counsel.

Detroit, Michigan,
Ponchartrain Hotel,
October 27th, 1916, 4 P. M.

Met pursuant to adjournment and agreement of counsel.

Parties present as before.

JAMES E. BARTLETT, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. James E. Bartlett, age 49; Detroit, Michigan; Assistant Secretary and Treasurer of Parke-Davis & Company, and in charge of the sales department of that concern. I direct all sales and promotion, including sales and detail staff. Parke-Davis & Co. are pharmaceutical and biological manufacturers.

Q2. In this case witnesses both for plaintiff and defendant have referred to "detail" work. Will you please explain what is meant by this expression?

By Mr. Rawle: Objected to as not rebuttal and as already fully explained in the previous record.

A. By "detail" work we understand the method by which we introduce our specialties with physicians, dentists, veterinarians, hospitals, etc., through the personal solicitation of employees whom we style as "detail" men.

Q3. Is, or is not, this character of work important in introducing specialties and creating a demand for them?

Objected to as not rebuttal.

A. We consider it indispensable.

Q4. It has been stated by certain witnesses for the defendant in this case that this character of work is on the decrease among pharmaceutical houses and not considered of as much importance as formerly. What do you know as to this?

Objected to as not rebuttal and irrelevant.

A. Parke-Davis & Co. are constantly increasing the amount of detail work being done and the number of men employed in that character of work.

Q5. What are the reasons which actuate your concern in pursuing this policy?

Same objections.

A. We are actuated by the belief that that method is the best that we can employ to increase the business. We look upon "detail" work as a form of advertising.

Q6. Do you have any knowledge as to what the general practice is among pharmaceutical manufacturers at this time in respect to this class of work, or I might say as to the amount of this class of work being done generally by pharmaceutical manufacturers as compared with what was done formerly?

Objected to as not rebuttal and irrelevant.

A. I believe that all the leading pharmaceutical houses employ detail work to a greater or less extent, but I am not competent to state definitely whether or not other houses are increasing or decreasing the work. I can only state what we do definitely.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ7. Do your "detail" men call upon doctors who buy and dispense their own medicines?

A. No, sir.

XQ8. Do you mean that your "detail" men do not call on dispensing doctors and that you do not sell direct to dispensing doctors?

A. Our "detail" men do not call upon dispensing physicians with a view to selling them. If they call on them at all it is with a view to introducing some of our specialties. We do not sell dispensing physicians direct.

XQ9. Do you mean that your "detail" men never take an order from dispensing doctors directly?

A. I am unable to say positively that a detail man never takes an order from a dispensing physician, but he never takes it directly. I mean by that, to be billed directly.

XQ10. If a "detail" man takes an order directly, to whom do you bill the goods?

A. I am unable to state that he ever does take an order from a dispensing physician, but any order taken in that way is billed through a druggist or physicians'

supply house. Our detail men are employed exclusively for the purpose of creating a demand for our specialties and are not expected to take any orders whatever.

XQ11. You have said that the "detail" system is "indispensable." I assume that you mean by that that the experience of your house is that it is a useful and valuable method of advertising and that you have found it to be the best?

A. In an experience of fifty years in the pharmaceutical business we have always considered "detail" work as the most important single factor in our success.

Deposition closed.

JAMES E. BARTLETT.

Adjourned until tomorrow, Saturday, October 28th, 1916, at 9 A. M., at same place.

Detroit, Michigan,
Ponchartrain Hotel,
October 28th, 1916, 9 A. M.

Met pursuant to adjournment.

Parties present as before.

JOSHUA E. BOLENBAUGH, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

Q1. Please state your name, age, residence and occupation.

A. Joshua E. Bolenbaugh, age 52; Lancaster, Ohio; traveling salesman for Frederick Stearns & Co., of Detroit, Michigan, pharmaceutical manufacturers. I have been a pharmaceutical salesman for about twelve years and among other houses formerly worked for Wm. R. Warner & Co. for a period of three years, beginning on January 1st, 1912.

Q2. Do you know S. J. Hagaman, and if so, who is he and when did you know him?

A. Yes, I know Mr. Hagaman. He was assistant sales manager for Wm. R. Warner & Co., from whom I took my instructions in selling their line. He traveled with me once a year for a period of three days at a time during my employment by that house. The first time he was with me a week. That was when I first began working for them. After that he usually stayed with me three days on each visit.

Q3. Did Mr. Hagaman ever say anything to you about a product in their line known as Quin-Coco, and if so, what?

By Mr. Rawle: Objected to as not rebuttal.

A. Yes, he told me it was the same formula as the Lilly Coco-Quinine.

Q4. Did Mr. Hagaman ever solicit orders for this preparation in your presence, and if so, what methods did he employ?

Same objection and because in any case the only evidence would be as to what Hagaman said.

A. Yes, his first trip with me he showed the preparation by pouring it on a piece of white paper, showing it was the same color as Coco-Quinine, Lilly, but a little thinner preparation, run easier, and authorized me to demonstrate it in the same way.

Q5. In selling Quin-Coco what representations did you make to your trade respecting the item as compared with Coco-Quinine, Lilly?

Objected to as not rebuttal and because it has not been shown how the witness was instructed to sell.

A. As being the same in formula, color, etc.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ6. Who was the first Lilly man that you ever talked with about this matter?

A. I never talked to any Lilly man.

XQ7. Have you come from Lancaster, Ohio, today or yesterday?

A. Yes.

XQ8. Just for the purpose of testifying in this case?

A. No, I had some business with the house I represent, Frederick Stearns & Co., also.

XQ9. Would you have come here at this time if it had not been for this case?

A. If Frederick Stearns & Co. would have called me in I would have come. That is for them to answer.

XQ10. But if Stearns & Co. had not called you in you would not have come at this time, would you?

A. Probably not.

XQ11. And Frederick Stearns & Co. did not call you here today did they?

A. What have you reference to here at the hotel or to Detroit?

XQ12. I mean to ask whether you are present here in Detroit today because you were called in by your employers?

By Mr. Bradford: All the questions on cross-examination are objected to as immaterial and irrelevant and not cross-examination. The matter inquired about has no bearing upon any fact in issue.

A. Frederick Stearns & Co. left it to me entirely whether or not to give testimony here, to give a deposition. There were no orders from them that I must give this deposition, or that I should give the deposition.

XQ13. Who first requested you to testify in this case and to come to Detroit for that purpose?

Same objections, and in order to satisfy counsel it is made of record that counsel for plaintiff wrote to witness and asked him if he would come here today for this purpose, after first getting the permission of his employers as we have done in each instance when we have requested a witness to testify who is in the employ of another concern.

A. Mr. Bradford.

XQ14. When did he first write you on the subject?

A. October 16th, 1916.

XQ15. Since you arrived in Detroit have you talked with any person connected with Lilly & Co., except Mr. Bradford?

A. No, sir.

XQ16. Have you met or been introduced to any Lilly representative since you came to Detroit this morning?

A. Yes, Mr. Bradford introduced me to Mr. Martin and Mr. Lynn, but we did not talk about the case.

XQ17. You understood that Mr. Martin is a Lilly salesman, did you not?

A. Not until I was introduced to him.

XQ18. Do you now understand or have you been given to understand by anybody that Mr. Martin is a Lilly salesman?

Objected to as immaterial, irrelevant, incompetent and not cross-examination.

A. Yes.

XQ19. And Mr. Lynn is the gentleman who just came into the room since you answered the last question?

A. Yes.

XQ20. Have you ever been a druggist or an educated pharmacist?

A. I am neither.

XQ21. When you said above "being the same in formula" did you mean that the two preparations had the same quinine strength per teaspoonful?

Objected to as immaterial.

A. Yes, sir.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ22. I show you a document which is marked "Plaintiff's Exhibit, Document No. 3," and which has been frequently referred to in these depositions as the "Blue List," and ask you if you recognize it and if you had one of these documents when you were in the employ of Wm. R. Warner & Co.?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant and immaterial.

A. Yes, I recognize it and I had one when I was in their employ.

RDQ23. What is this list and for what purpose was it used?

Same objection.

A. We referred to it where we had a preparation corresponding to a preparation of other manufacturers and under a different name.

Re-cross-examination.

By Mr. Rawle:

RXQ24. Give an instance?

A. Listerine, for instance, our antiseptic solution. The antiseptic solution of Wm. R. Warner & Co. was the same as Listerine.

RXQ25. That is you understood your antiseptic solution to have the same medicinal effect as Listerine. Is that right?

A. I understood it to be the same formula.

RXQ26. And you were selling your antiseptic solution in competition with Listerine, is that right?

A. No. I sold antiseptic solution as I suppose all pharmaceutical houses sold it, but we understood it to be the same as Listerine as an antiseptic.

RXQ27. Were all the other drug manufacturing houses selling a preparation of the same formula as Listerine?

Objected to as irrelevant and immaterial and not cross-examination.

A. I don't know that.

RXQ28. Did a considerable number of other drug houses market a preparation of substantially the same formula as Listerine and in competition with Listerine?

Same objection.

A. Well, I don't know that, but I would suppose that all first-class pharmaceutical houses would manufacture an antiseptic solution.

RXQ29. Similar to Listerine, do you mean?

Same objection.

A. I don't know.

RXQ30. You said above "I sold antiseptic solution as all pharmaceutical houses sold it." Don't you understand that all or most of the leading pharmaceutical houses market a preparation which you understood to be the same as Listerine, as an antiseptic?

Same objection.

A. I suppose so.

RXQ31. As a Warner salesman and as part of your outfit as such did you carry with you a blank book having the labels of various items of the Warner line pasted in it and did you use such book in making your sales?

By Mr. Bradford: Objected to as grossly

improper, the question being in no sense cross-examination but an attempt to make witness a witness for defendant, and as wholly immaterial and irrelevant.

By Mr. Rawle: The question is withdrawn.

Deposition closed.

Joshua E. Bolenbaugh.

Joseph A. Grimaldi, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. Joseph A. Grimaldi, age 37, Detroit, Michigan; sales manager R. A. Carmichael & Company, of Detroit, Michigan. I have been with this house for about two and a half years. I was employed as a traveling salesman for Wm. R. Warner & Co., for about eighteen months, from May, 1911, until November, 1912.

Q2. While you were acting as a salesman for Wm. R. Warner & Co., what were your duties?

A. My duties were to represent them in Eastern Michigan in the sale of their line of pharmaceuticals and non-secrets. That territory embraced Detroit and vicinity and as far West and North as Grand Rapids, Michigan; Grand Rapids being the boundary line.

Q3. Do you know Mr. Charles E. McNulty, and if so, who is he and in what capacity have you known him?

A. I have known Mr. Charles E. McNulty as the assistant sales manager of the Wm. R. Warner & Co., and he was the man by whom I was employed.

Q4. Did Mr. McNulty ever make any trips with you in selling goods?

A. Mr. McNulty visited the local trade in the city of Detroit, with me, on several occasions.

Q5. Among other items in the Warner line did you have a preparation known as Quin-Coco?

A. Yes, sir.

Q6. Did you ever observe Mr. McNulty in his methods of soliciting orders for Quin-Coco?

By Mr. Rawle: Objected to as not rebuttal.

A. I did.

Q7. Please explain what you have ever heard Mr. McNulty say to a retail druggist when endeavoring to sell him Quin-Coco.

Objected to as not rebuttal.

A. I have heard the following dialogue take place between Mr. McNulty and the retail druggists:

(McNulty) "Have you any sale for Coco-Quinine?"

(Druggist) "Yes, some."

(McNulty) "Do you sell very much of it?"

(Druggist) "Well, some physicians prescribe it quite frequently."

(McNulty) "'Well, we have a preparation that is very similar, Quin-Coco."

(Druggist) "No, I don't believe you have. There is only one product made that does the work and that is Coco-Quinine."

(McNulty) "Well, if you will allow me to show you, I will prove to you that there is a great similarity between the two. Have you any Coco-Quinine on hand?"

(Druggist) "Yes, I have."

(McNulty) "Well, produce two graduates and pour a small amount in one graduate of the Coco-Quinine and I will pour a similar quantity of Quin-Coco in another graduate. Now compare them for color and taste. Are they not practically identical?"

(Druggist) "Yes, there is a great similarity."

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(McNulty) "Now, you admit that frankly. The only difference is in the cost."

Q8. As I understand your last answer it is stated as a dialogue between Mr. McNulty and the retail druggist?

A. Absolutely.

Q9. Did you ever hear Mr. McNulty go through this method or dialogue with the retail druggists more than once?

A. I did.

Same objection to last two questions.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ10. When Mr. McNulty visited a druggist with you did he solicit his trade for the entire Wm. R. Warner line?

A. The combined lines, yes, sir.

XQ11. How long would a call on these druggists last?

A. It all depended. Sometimes, well, from fifteen minutes to an hour.

XQ12. Could you go through the entire line in that time?

A. In an hour's time, yes.

XQ13. Did you and he have with you a blank book in which were pasted labels of the Warner line or most of it?

By Mr. Bradford: Objected to as not cross-examination, as immaterial and irrelevant.

A. We had both label book and samples.

XQ14. And the label book enabled you to get through the line quickly, did it not?

Same objection.

A. No, sir; it did not. We would work one in

conjunction with the other. We would show the label and if the man was interested would at the same time show the sample thereof, bringing forth all the sales talk that was necessary to put over the sale of said merchandise.

XQ15. The Warner line had several thousand items did it not?

Same objection.

A. Yes.

XQ16. And you did not carry over about sixty or seventy different samples in your sample case, did you?

Same objection.

A. When you speak of the Warner line do you mean the Wm. R. Warner line or the combined lines?

XQ17. I mean the combined lines.

Same objection.

A. I presume about one hundred different items, at least.

XQ18. Did you or the druggist usually turn over the pages of the label book as you took up successively the items?

Same objection.

A. It varied. Sometimes I did it personally, and sometimes the druggist.

XQ19. Who first of the Lilly Company spoke to you about this case and about your testifying as a witness or wrote to you on the subject?

A. I was never written to at all. I was called upon personally at the office by Dr. Martin, local representative of Eli Lilly & Company. It was way back last Spring.

XQ20. How often have you seen him on the subject?

A. Just the one time.

XQ21. Who arranged with you to come here today?

A. Both himself and Mr. Bradford.

Cross-examination closed.

Deposition closed.

J. A. GRIMALDI.

Recess until 7.30 P. M. today.

After recess, 7.30 P. M.

CHARLES F. ALLEN, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Charles F. Allen, age 50, 4622 Lake Park Avenue, Chicago, Ill., representative of McKesson & Robbins, New York, N. Y., manufacturing chemists and wholesale druggists. I was traveling salesman and assistant sales manager for Wm. R. Warner & Co., and the Pfeiffer Chemical Company for about five years prior to July 1st, 1913. I have been in the pharmaceutical business and drug line for twenty-five years.

Q2. Mr. Allen, I called to see you in Cleveland on Sunday morning last and asked if you would appear as a witness for us here at this time. You appeared reluctant and stated that you did not wish to do so and it was only after I had stated that we could compel you to appear by a writ of subpoena at some other time and place that you finally consented in order, as you expressed it, to save the trouble and annoyance. Is this correct?

A. It is.

Q3. Has any one else besides myself ever talked with you about appearing as a witness in this case?

A. Yes, the Chicago representative of Lilly & Co., Mr. R. A. Whidden, and this was one evening about two and a half weeks ago.

Q4. When you were with the Warner-Pfeiffer Company did you specialize on any particular line or lines, and if so, what?

A. I specialized on the Hobson line and perfumes.

Q5. I show you a card marked "Plaintiff's Exhibit, Defendant's Perfume Card A" and ask you if you recognize the same and what it is?

By Mr. Rawle: Objected to as not proper for rebuttal and as irrelevant.

A. It is very similar to cards that were carried by myself and the other salesmen of Warner and Pfeiffer in selling perfumes, the idea being that the perfumes corresponding to the numbers on both sides were similar in order, or analogous.

Q6. By whom were these cards given out or issued to the salesmen?

Same objection. .

A. As I recall it they were put into the sample cases and furnished by the employees of the house.

Q7. Was this card ever explained to you by any one, that is, as to the significance of the respective sides of the card?

Same objection and because "any one" cannot bind the defendant.

A. I can't recall that it was specifically explained, the inference being that the salesman would know from examining it.

Q8. On one side of this card I note No. 1 is "Guerlains Jickey" 8 oz. $4.77, and on the reverse side No. 1 is "Vogue," 9 oz. $3. 20 oz. $6. Please explain what is the significance of this information as to these two items.

Same objections.

A. The significance was that the two odors were very similar and that "Vogue" could be purchased for considerably less money.

Q9. Is there anything on the card itself to indicate that "Vogue" is a similar odor to "Jickey"?

Same objections.

A. Only the number as understood by the representatives.

Q10. From whom did the representatives get this information?

Same objections.

A. They must have gotten it from some one in the house.

Q11. As to these two odors last referred to, which is the original and which the Pfeiffer item?

Same objections and because the witness is not shown to have any knowledge of what "original" means in this connection.

A. The "Vogue" was the Pfeiffer or Mellier item and the "Jickey" was Guerlain's.

Q12. I show you another card marked "Plaintiff's Exhibit, Defendant's Perfume Card B" and ask you if you recognize the same and if what you have said in reference to card A also applies to Card B?

Objected to as not rebuttal and as irrelevant.

A. I do recognize it and it does apply.

Q13. I also show you a document marked "Complainant's Exhibit, Document No. 3" and ask you if you recognize this and what it is?

Same objections.

A. It appears to be a list of comparative prices of pharmaceutical products as furnished the salesmen of Pfeiffer Chemical Company and Warner. It was termed a "replacer list."

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ14. Where did you see R. A. Whidden, the Lilly representative?

A. At my home in Chicago.

XQ15. Did he call on you at your home?

A. He did, unexpectedly.

XQ16. Have you seen him more than once in this matter?

A. No.

XQ17. Have you seen any other Lilly representative except Mr. Bradford and Whidden?

A. No, except that I met a Dr. Martin since my arrival in Detroit this evening, just a moment.

Deposition closed.

Charles F. Allen.

Adjourned to meet Monday, October 30th, 1916, at 11 A. M., at Hotel Bellevue-Stratford, Philadelphia, Pa.

Philadelphia, Pa., Oct. 30th, 1916, 11 A. M.
Bellevue-Stratford Hotel.

Met pursuant to adjournment.

Parties present as before.

Earl R. Peabody, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Are you the same Earl R. Peabody who has heretofore testified as a witness on behalf of the plaintiff in this case?

A. I am.

Q2. When you were on the stand before I neglected to question you on one point that I had intended to question you about and you have been recalled for the purpose of asking the questions which were then omitted.

In the testimony of Mr. G. A. Pfeiffer, who is here present, when he appeared as a witness for plaintiff he stated as a part of his answer to Q98:

> "As regards our firm, we have never authorized or suggested any one to use any products we make in place of the products specified. In all our instructions to the travelers this point is not only discussed but emphasized. Further, we point out the objections to such a practice. We consider it not only unethical, but a violation of confidence on the part of the dispenser."

In any instructions given to you by any one representing the Wm. R. Warner & Co., was this point discussed and the objections to such a practice pointed out?

A. This point was not discussed and nothing was mentioned in regard to this practice.

Q3. You visited the house, spent some time in each of the departments, and received instructions on such visits did you not?

A. I did.

Q4. In answer to Q143, page 34, of defendant's record, witness G. A. Pfeiffer, among other things, said:

> "I also talked about the question of substitution, and pointed out to him that this is dishonest, no matter who did it, bringing out the point that the drug business was rightly ethical, that confidence must exist, that health and life depended thereon."

Did Mr. G. A. Pfeiffer or any one else connected

with the Wm. R. Warner & Co., ever make any such statement or explanation to you?

By Mr. Rawle: Objected to as leading.

A. As I remember there was no such statement or explanation made about this.

Q5. Are you reasonably certain as to this?

Objected to as inadmissible.

A. Yes, I feel reasonably certain.

Q6. How many times did you visit the Philadelphia house?

A. Once.

Q7. This was during the early part of your employment?

A. Yes, sir.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ8. I understand that you were first employed by Wm. R. Warner & Co., in February, 1911?

A. Yes, sir.

XQ9. Therefore you have now been testifying to something that happened more than five and a half years ago?

A. I should say about that time, yes, sir.

XQ10. And who was it who gave you your instructions as to how to sell, about February, 1911?

A. Mr. Hagaman.

XQ11. Do you distinctly remember now, after so long a period, exactly what Hagaman told you?

A. I can remember some of the things very well, because it was the first traveling job I ever had and it impressed me more than perhaps some things would now.

XQ12. Perhaps some of the things he told you you have forgotten?

A. Some of them, yes.

XQ13. Where was he when he instructed you?

A. In the Essex Hotel, Boston, Mass., and also while I was going around with him calling on the retail trade. I traveled with him three or four days the first time; I can't remember exactly.

Re-direct-examination.

By Mr. Bradford:

RDQ14. Who gave you any instructions when you visited the house in Philadelphia?

A. I talked with Mr. G. A. Pfeiffer and also I think with Mr. H. Pfeiffer.

RDQ15. About when was this in respect to the time when you took employment with them?

A. I can't tell exactly how long I had been employed when I was over there. I should say it was a month or six weeks after I took employment with them. I can't tell exactly without looking at the records.

Re-cross-examination.

By Mr. Rawle:

RXQ16. On this occasion how long did you talk with Mr. G. A. Pfeiffer?

A. I talked with him several times, perhaps two or three during my visit there. The length of my conversations I cannot state.

RXQ17. Can't you remember what time of the year it was that you came to Philadelphia?

A. I should think it was some time in March. I remember very distinctly the weather was cold.

RXQ18. Were these two or three talks with Mr. G. A. Pfeiffer for more than a few minutes duration each?

A. No, they were not.

RXQ19. Have you come from Boston, Mass., to testify this morning?

A. Yes, sir.

Re-re-direct-examination.

By Mr. Bradford:

RRDQ20. Were the teachings of Mr. Hagaman when he was with you in Boston consistent with this statement by Mr. Pfeiffer in his testimony as to their teachings to their salesmen?

By Mr. Rawle: Objected to because the witness has already been interrogated as to Hagaman's teachings and because the question tends to lead the witness and because the only proper question is as to what Hagaman said.

A. No, I don't think they were.

RRDQ21. Mention anything that Mr. Hagaman said to you or that he did in your presence not consistent with this statement?

Objected to because the witness has been interrogated on this point before.

A. In regard to substitution I have seen him attempt to sell one of their preparations as a substitute for an advertised article. Instances of this you will find in my previous testimony.

Re-re-cross-examination.

By Mr. Rawlæ (without waiver of objections):

RRXQ22. You have just used the word "substitute" in your last answer. In your answer to Q11 of your original deposition you used the word "replacer." Do you intend to use those two words in the same sense?

A. As I understand it they both mean the same.

RRXQ23. I understand that you are a salesman for "Pluto" water at the present time. Mention one or two laxative waters that are largely marketed and with which you are in competition?

By Mr. Bradford: Objected to as immaterial, irrelevant and not cross-examination.

A. Hunyadi, Abilena and Apenta.

RRXQ24. And you are selling "Pluto" water in competition with those waters, are you?

Same objection.

A. No, I am not selling it in competition to any one. I am selling it on its own merits. You might say that they are "competitors." But we do not use the names of these waters as a means of making a sale.

RRXQ25. And if any druggist has been stocking Hunyadi water and you persuade him to buy your Pluto water is that what you mean by a "replacer"?

Same objection.

A. When I go in to sell a customer I don't know whether he is stocking Hunyadi or not and I don't mention the fact. I am simply looking for Pluto water business, if I can sell him Pluto water. I don't figure that it is replacing it at all.

RRXQ26. And if the druggist replies that he is keeping Hunyadi water for sale do you at once cease your efforts to sell him Pluto water?

Same objection, and further because this line of questioning is unjustified. Everyone knows that Pluto water is an extensively advertised water and has a market of its own.

A. No, I do not.

RRXQ27. And you would be pleased if you could persuade the druggist to drop Hunyadi and substitute or replace it with Pluto and keep it for sale, would you not?

Objection repeated.

A. It would not make any difference to me whether he dropped Hunyadi or not, and in making our sales for Pluto water it is the policy of our house not to mention any other water of similar properties when trying to make a sale.

RRXQ28. That is, it is the policy of your house, in soliciting a sale, not to mention competitive goods?

Same objection.

A. Not to influence a sale.

RRXQ29. If a druggist whom you were soliciting should say to you that he would give up the sale of Hunyadi and thereafter stock Pluto water would he be replacing Hunyadi with Pluto?

Same objection.

A. I never took that into consideration, because I never knew of a druggist giving up or stop stocking an article that there was a demand for, and I believe there is a demand for both of these.

RRXQ30. Suppose such a case to exist and then answer my question upon that supposition.

Objected to as immaterial, irrelevant and not cross-examination, and incompetent and inadmissible.

A. I cannot even stretch my imagination far enough to suppose that such a case could exist, because each article had been well advertised and so far as I know the demand for these has been created through those channels.

Deposition closed.

E. R. Peabody.

By Mr. Bradford:

Harry Fritsch, a witness who formerly testified for defendant, appears and his appearance is at the request of counsel for plaintiff and through the courtesy of counsel for defendant, responding to the request of counsel for plaintiff that Mr. Fritsch might be called in order that he might ask him a few questions in the nature of continuing the cross-examination of his original testimony in the case.

By Mr. Rawle: I produce the witness at the request of counsel who in calling him makes him his own witness.

By Mr. Bradford:

Q1. You are the same Harry Fritsch who has heretofore testified as a witness for defendant in this case?

A. I am.

Q2. In your original testimony you stated that you made certain experiments in an attempt to make a preparation like Coco-Quinine and that these experiments were made in 1907 and the spring of 1908, before the Wm. R. Warner & Co. became affiliated with the Pfeiffer Chemical Company. Is this correct?

A. Yes, sir.

Q3. In answer to RDQ111, page 471, you stated "It was the early part of 1908, because I went away on a little vacation, and I know there were no experiments made after that." In answer to RDQ112 you stated that you went to Atlantic City on this vacation. What time of the year were you in Atlantic City?

A. That is something hard for me to tell at this time, I could not tell you at the present time.

Q4. You are certain, however, that it was after these experiments were made?

A. On different occasions I made experiments and just now I cannot recall the time it was.

By Mr. Rawle: Objected to because the dates mentioned were prior to the incorporation and organization of Wm. R. Warner & Co., which took place in July, 1908.

Q5. Who was with you on your Atlantic City trip on vacation?

A. My wife.

Q6. Any one else; children?

A. No, sir.

Q7. Where did you stop in Atlantic City?

A. I cannot say at the present time.

Q8. Was it at a hotel?

A. No, sir.

Q9. At a boarding house?

A. Yes, sir.

Q10. How long were you there?

A. I may have been gone about two or three days and my wife the balance of the time.

Q11. Don't you remember the name of the proprietor of the boarding house?

A. I do not.

Q12. Don't you remember where it was located?

A. Not at the present time, without I should consult Mrs. Fritsch.

Q13. You are certain, however, that it was in the fall of 1908 after the Wm. R. Warner & Co. was taken over by the Pfeiffer Chemical Co.?

A. It was the summer of that year that I went to Atlantic City.

Q14. Where did you spend your vacation in the summer of 1907?

A. I don't know, sir.

Q15. Was that not in Atlantic City, too?

A. I could not say at this time, I am not sure.

Q16. Why are you sure as to 1908 and not sure as to 1907?

A. I spoke to my wife on the occasion prior to the time that I came here.

Q17. You mean that you spoke to your wife prior to the time you testified before?

A. Yes, sir.

Q18. And the dates you gave then were the dates as stated to you by your wife?

A. It was that year that I went to Atlantic City.

Q19. You depended wholly upon your wife's recollection in giving your deposition before?

A. Passing conversation, that's all.

Q20. Then of your own knowledge you don't know when it was?

A. I do, in that summer, I could not give you the exact date, but it was that year I was there.

Q21. Who was in charge of the Wm. R. Warner & Co. when you took that vacation?

A. I would have to look that up. We made several changes.

Q22. Who was the General Manager of the company at that time?

A. Mr. Kallenbach.

Q23. Was Mr. G. A. Pfeiffer at the plant at that time in any capacity?

A. We considered Mr. Pfeiffer as the general head. Mr. Kallenbach was the man who went through the factory; he was superintendent, who instructed our work.

Q24. And when do you say that was?

A. That was when the Pfeiffer Chemical Company first bought over from Wm. R. Warner & Co.

Q25. I asked you who was in charge of the plant when you took your trip to Atlantic City. And I ask you again was Mr. G. A. Pfeiffer in charge of the plant when you took your trip to Atlantic City?

A. My trip to Atlantic City was the summer of the year that Mr. Pfeiffer came to Wm. R. Warner & Co.

Q26. Have you been to Atlantic City since.

A. Yes, sir.

Q27. How many times?

A. Every year since, took a trip down and back again.

Q28. Was that your first trip to Atlantic City with Mrs. Fritsch? I mean the visit you have mentioned?

A. No, she has been going with me every year.

Q29. Since when?

A. Ever since I married. Every year since I married we have had a trip up and down.

Q30. Then what do you mean when you say "I know there were no experiments after that."

A. Because they had a formula for a chocolate quinine preparation and I did not consider it worth while to waste my time after that.

Q31. When did you take charge of the laboratory work?

A. Twenty years ago.

Q32. You have been in charge of the laboratories of Wm. R. Warner & Co. for the last twenty years?

A. The liquid department for the past twenty years.

Q33. What were your duties; what did you do in the liquid department?

A. Manufacture all liquid preparations.

Direct-examination closed.

Cross-examination.

By Mr. Rawle:

XQ34. You have just said that you knew that the Pfeiffer's "had a formula for a chocolate quinine preparation" and that "you did not consider it worth while to waste any time after that." Please state whether or not all your experiments on a chocolate quinine preparation took place before the Pfeiffers came to Philadelphia?

A. A lot of experiments I made before Pfeiffer Chemical Company came to Philadelphia.

XQ35. Did you make any such experiments after Pfeiffer came to Philadelphia?

A. No, sir.

Re-direct-examination.

By Mr. Bradford:

RDQ36. Who told you to make the experiments that you did make?

Objected to as it refers to a period before the incorporation of the defendant.

A. Mr. George Martin.

RDQ35. Who was Mr. George Martin?

A. An employee of Wm. R. Warner & Co. who had charge of the office work on special formulae.

RDQ36. Where is Mr. George Martin now?

A. I cannot tell.

RDQ37. Did you ever have any conversation of any kind with Mr. G. A. Pfeiffer about making a preparation of this kind?

A. Yes, sir.

RDQ38. When was this?

A. After the Pfeiffer Chemical Company came to Philadelphia.

RDQ39. How long after?

A. I could not say now, the exact time.

RDQ40. A month?

A. I do not know at this time.

RDQ41. Can you give it approximately within a month or two?

A. It may have been two months, I can not say positively.

Re-cross-examination.

By Mr. Rawle:

RXQ42. You have just spoken of Wm. R. Warner & Co. as existing before the Pfeiffers came to Philadelphia. Please state whether or not that was the business of Wm. R. Warner, Junior, trading as Wm. R. Warner & Co. I mean the old concern that existed and employed you before the Pfeiffers came to Philadelphia?

By Mr. Bradford: Objected to as incompetent, immaterial and irrelevant.

A. Yes, sir.

RXQ43. And after the Pfeiffers came to Philadelphia a corporation was organized called Wm. R. Warner & Co., is that correct?

Same objection.

A. I do not know anything about a corporation organized. I was still employed under the old name of Wm. R. Warner & Co.

Deposition closed.

Harry Fritsch.

Recess until 2.30.

After Recess.

FRANK M. RAMSEY, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Frank M. Ramsey, age 64, Glenside, Pa.; manufacturing pharmacist.

Q2. Were you formerly connected with the house of Wm. R. Warner & Co., and if so, when in what capacity?

A. I was, from September, 1871, until I think it was November, 1908, I began as errand boy and served in different capacities, assuming some of the managing duties as early as 1879, and for the last ten years of my service was general manager of the concern, except that I never had anything to do with the financial end of it.

Q3. Do you know Mr. John E. McCambridge, and if you do, what position did he hold in the Wm. R. Warner & Co.?

A. We knew him as superintendent of the wet laboratory; that is the way we designated it. He was in this position a number of years prior to the time I went out as general manager, and was connected with the concern for a long time. I cannot say just the number of years.

Q4. What was the position of Mr. Harry Fritsch in the concern in respect to Mr. McCambridge?

A. I knew him as an assistant to Mr. McCambridge.

Q5. And did this relation continue up to the time of Mr. McCambridge leaving the concern or his discharge?

A. Yes, I can't explain the situation, matters changed somewhat. I should say he was up to the time I left.

Q6. In any event this was so up to the time you ceased to be general manager?

A. I don't remember whether he went away before I did or not, but up to the time he severed his connection with the concern, provided it was prior to the time of my severance.

Q7. Prior to the severance of your relations with Wm. R. Warner & Co., as its general manager, did you have any knowledge of any experiments made in the laboratories during 1908 or 1907, for the purpose of making a chocolate quinine preparation similar to Lilly's Coco-Quinine?

A. I did not.

Q8. Did you authorize or request any one to make any such experiments?

A. I did not.

Q9. Who would have been the man who would naturally have had charge of such experiments had they been made?

A. If the instructions had gone from myself, Mr. McCambridge.

Q10. Who was Mr. George Martin and what was his position in the concern?

A. Originally a clerk in the drug department. After closing that department his duties were general.

Q11. Was he under you in authority?

A. Yes.

Q12. Did he have authority to direct the preparation of new formulæ or new preparations?

A. Not from me.

Direct-examination closed.

Cross-examination.

By Mr. Rawle:

XQ13. Who owned the Warner business in those days before the Messrs. Pfeiffer came to Philadelphia?

Objected to as incompetent, irrelevant and immaterial.

A. Wm. R. Warner, up to the time of his decease, which was in 1901. The presumption on my part is that his son, William R. Warner, Jr., after that.

XQ14. During the ownership of the son did he not act as the director of the business of the company?

Same objection.

A. Superficially.

XQ15. And you really ran it?

A. That question is a very broad one. I have already said I had nothing to do with the finance. I had to do with almost every other detail.

XQ16. Did he not give whatever orders he pleased without consulting you?

A. He may have in some instances.

XQ17. Was he not the real boss?

A. He was the owner.

XQ18. And were there not a great many things he did without your knowledge, or without consulting you?

A. If he did things without my knowledge I could not know of them. I was usually consulted on all important matters, except finance.

XQ19. Is it not true that that house got up special formulæs and put up special packages? I mean Wm. R. Warner & Co., prior to the advent of the Messrs. Pfeiffer.

By Mr. Bradford: Objected to as immaterial, irrelevant and not cross-examination.

A. Yes.

XQ20. And did not Martin have charge of that part of the business?

A. The custody of all private formulæs was with me. Orders for same were sent from my office.

XQ21. Can you tell anything about Martin?

A. In what regard?

XQ22. Did you not just say "I can't say anything about Martin." What did you mean?

Objected to as improper as it does not appear that the witness made any such statement.

A. That is not my testimony.

XQ23. Are you willing to swear that Mr. Warner himself could not have given an order to Martin or Fritsch or either of them to experiment with the chocolate quinine preparation, without his telling you?

A. I would not swear to that.

XQ24. Then it is perfectly possible he may have done so, is it not?

A. It would have been his privilege to do so.

XQ25. Are you or have you ever been a chemist?

A. It depends upon the definition of a chemist.

XQ26. Define it your way and then say whether you have been one?

Objected to as immaterial, irrelevant and not cross-examination.

A. A self-made, but not a graduate of any school.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ27. From your knowledge of Mr. Wm. R. Warner, Jr.'s, methods and his habits in connection with the business, do you think it probable that he would give instructions to people in the laboratories to prepare special formulas or imitate preparations of other houses without first consulting you?

By Mr. Rawle: Objected to as immaterial and inadmissible.

A. I don't think it at all probable that Mr. Warner would have issued any orders in person for imitating preparations of other houses. It was possible that he could issue an order for making special preparations without consulting me.

RDQ28. Do you recall any preparations originated by your house by the direction of Mr. Wm. R. Warner, Jr.?

A. I do not.

Re-cross-examination.

By Mr. Rawle:

RXQ29. Do you mean to swear that there were no original preparations originated by your house by the direction of Mr. Warner, Jr.

A. None that I recollect.

RXQ30. Do you mean that you don't recollect the names of them, or do you deny that there were any?

A. I don't recollect the fact.

RXQ31. Do you deny that there were any such?

Objected to as the witness has already answered as fully as he can according to his recollection.

A. I neither deny nor affirm.

Deposition closed.

Frank M. Ramsey.

It is stipulated by and between counsel for the respective parties that Maurice W. Watson, a druggist of 595 Bath Street, Bristol, Pa., would identify a partly filled bottle of Coco-Quinine, bearing the Lilly label, and here produced, as having been in his drug store and on the shelves thereof for a period of five years or more, and that its contents as now turned over to counsel are the same as when it was originally purchased except for the portion that has been used.

Said bottle is introduced in evidence and marked "Plaintiff's Exhibit, Watson Bottle of Coco-Quinine," and it is agreed that it may have the same force and effect as evidence as if Mr. Watson were present in person and identified the same, counsel for defendant having talked with Mr. Watson on the subject by telephone.

It is noted that on the back of the bottle is a label containing a Serial Number, which is presumed to identify the date of manufacture, and counsel for plaintiff agrees to send this number to plaintiff with the request that they ascertain from their records the date of manufacture of this package of Coco-Quinine and that he will communicate their reply to counsel for defendant.

By Mr. Rawle: The evidence and the exhibit are objected to as irrelevant and immaterial.

Robert J. Groves, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Are you the same Robert J. Groves, who has heretofore testified as a witness on behalf of plaintiff in this case?

A. I am.

Q2. Mr. Groves when you were on the stand before you testified concerning certain experiments that were made by Mr. Harry Fritsch in the laboratories of Wm. R. Warner & Co., the purpose being to produce a chocolate quinine preparation in imitation of Coco-Quinine, Lilly.

You gave the date in answer to Q20, page 559, plaintiff's record, as the latter part of 1908.

Since that time Mr. Fritsch as a witness for defendant has testified that such experiments as he made

on this preparation were in the early part of 1908, and in 1907.

Please state whether or not you have any reason to change your mind as to the dates given in your original deposition, or if you have not, if you have any additional facts or circumstances which tend to fix the dates as originally given by you?

By Mr. Rawle: Objected to as not proper for rebuttal, the witness having been examined on the subject in the prima facie case, and Fritsch having been examined thereon for the defendant. Objected to also as inadmissible as a question under any circumstances.

A. I have no reason whatever to change my mind as to the probable date being the fall or latter part of 1908 when the Quin-Coco experimenting was done by Mr. Harry Fritsch. Mr. John E. McCambridge, prior to the fall of 1908, was general superintendent of the plant of Wm. R. Warner & Co. and no experimenting could have been done on any preparation without the knowledge of Mr. McCambridge and with his sanction, Mr. Fritsch at that time being a subordinate to Mr. John E. McCambridge, and Mr. McCambridge was not in the employment of Wm. R. Warner & Co., when the experiments were made.

Q3. In what particular part of the laboratory or plant were these experiments carried on and what were used as the means of experimenting?

By Mr. Rawle: Objected to as not rebuttal.

A. The experiments were carried on on the sixth floor of the building, known as the wet room department. The means employed were a small gas plate as a heating apparatus and fluid extract of yerba santa and cocoa butter being used with other ingredients.

Q4. Mr. Fritsch also stated that he was positive that it was in the early part of 1908 because he went away on a little vacation and he stated that he knew no

experiments were made after that. I ask you what your recollection is about Mr. Fritsch being away on a vacation in the fall of 1908, or any time during 1908, after Mr. G. A. Pfeiffer took charge of the plant?

Objected to as not rebuttal and as inadmissible and irrelevant.

A. I do not think that Mr. Fritsch had any vacation during 1908, but I do know for a certainty that he had a vacation in August, 1907, for he sent me a postcard dated from Atlantic City August, 1907, with his whole family on the card. During 1908, so far as I can recollect, there were no vacations, as each man did not know where he stood under the new management.

Q5. Mr. Fritsch also testified that he received the formula from St. Louis by which Quin-Coco had been manufactured in the laboratories there, about the month of February, 1909, and that he knew it could not be as early as December, 1908, because he got a cabinet which was not delivered to him until the first of the year, January, in which he kept his cards. He stated that it was after the first of the year when this cabinet was received. What is your recollection as to this?

Objected to as not rebuttal and as irrelevant under any circumstances.

A. The formulas were sent from St. Louis to Wm. R. Warner & Co., at intervals, and were kept by Mr. G. A. Pfeiffer on the first floor of the building. And when Mr. Fritsch wanted a formula for making any preparation he sent to Mr. Pfeiffer for it. As to the cabinet, it was on the sixth floor of the building prior to January 1st, 1909. As I left the laboratories on December 31st, 1908, and went on the road January 1st, 1909, and the cabinet was there then, prior to that date, and was kept in a vault in the fireproof stairway of the sixth floor which was prepared for the storing of private formulas, etc.

Q6. Did you personally have anything to do with this cabinet in any way?

Same objection.

A. On one or two occasions I assisted in putting it in the vault. That was prior to December 31st, 1908. It was pulled out and in to Mr. Fritsch's desk and then put back into the vault at night.

Q7. Were the formulas finally transferred from Mr. Pfeiffer's office to the cabinet?

A. The formulas were transferred to the cabinet after it was received on the sixth floor.

Q8. Who instructed you in your duties as a salesman before you went out on the road as a salesman for Wm. R. Warner & Co.?

Objected to as not rebuttal and because the witness has been fully interrogated on this subject in his former examination.

A. I received my general instructions from Mr. H. Pfeiffer and instructions in detail from Mr. Hagaman who visited several towns with me in January, 1909.

Q9. When you received your general instructions from Mr. H. Pfeiffer were you told that it was a reprehensible act and dishonest to advise druggists that they could substitute your preparations for preparations of other houses and that it was unethical and a violation of confidence?

Same objections and as inadmissible.

A. I was not.

Q10. Mr. S. J. Hagaman when testifying as a witness for defendant stated that while you were traveling for Wm. R. Warner & Co. the town of Bristol was not included in your territory. What about this?

A. In the early part of 1911 my territory was changed to part of the territory suburban to Philadelphia, Pa., in which Bristol, Pa., was included, and Mr. Hagaman as assistant sales manager should know this, as it was he who arranged my map, and Bristol, Pa., was in my territory from that time up to the time I left Wm. R. Warner & Co.

Q11. Mr. Hagaman also stated that he remembered working with you in Reading, Pa., and Pottsville, Pa. What have you to say as to this?

A. Mr. Hagaman worked with me in Reading, Pa., on two occasions, but he never was with me in Pottsville, Pa.

Q12. Mr. Hagaman in his testimony stated that in his opinion it is dishonest to suggest to a retail druggist that one product can be sold when the product of another house is called for. What have you to say as to this?

Objected to as not rebuttal.

A. Mr. Hagaman when as assistant sales manager and when on the road as a traveling salesman was selling goods every day in the week as a substitute or as he generally called it, a "replacer" for highly advertised goods of other houses, and it was from Mr. Hagaman, the latter part of January, 1909, I got my first lesson on substituting or "replacing" which was Mr. Hagaman's favorite word.

Direct-examination closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ13. Are you still in the employ of Eli Lilly & Co.?

A. Yes, sir.

XQ14. You have testified that "it was in the latter part of 1908 the firm of Wm. R. Warner & Co. was taken over by the Pfeiffer Chemical Co." Don't you know perfectly well that the Messrs. Pfeiffer took charge of the Warner business in June, 1908?

By Mr. Bradford: Objected to as not a fair statement of the witness's former deposition on this point.

A. As to the exact date I am not quite sure. The deal may have been consummated in June but it was

in July so far as my memory serves that they took possession.

XQ15. Then you made a mistake in saying that it was in the latter part of 1908, did you?

Objected to for July is the latter part of 1908.

A. I did not state that it was the latter part of 1908.

XQ16. You have testified that prior to the last month of 1908 Quin-Coco was "being supplied from the laboratories in St. Louis." Do you mean by that that prior to the last month of 1908 Quin-Coco was being manufactured at St. Louis?

A. Prior to January 1st, 1909, Quin-Coco was manufactured and shipped from St. Louis to Wm. R. Warner & Co., for distribution in the eastern markets, under the name of the Searle & Hereth Company, with a slip pasted on the bottom of each bottle "Distributed by Wm. R. Warner & Co."

XQ17. You understood that the Messrs. Pfeiffer were the owners of the Searle & Hereth Company, did you not? And that the St. Louis laboratories were used in connection with their business as the Searle & Hereth Company and the Pfeiffer Chemical Company?

A. Yes.

XQ18. Fritsch has testified that there were no experiments on this chocolate quinine preparation at the Philadelphia laboratories after the Pfeiffers came here, because it would have been a waste of time to have experimented on it in Philadelphia, when there was a formula at St. Louis and it was being manufactured there under that formula. What do you think about this statement?

A. Mr. Fritsch no doubt was aware of the formula at St. Louis, but for some unexplainable reason he did not get them, and Mr. Fritsch had no authority to make experiments of Coco-Quinine in the spring of 1908, which he has testified, without the knowledge of John E. McCambridge, who was general superintendent of

the entire building, and no formula could have been made or experimented on without his consent, Mr. Fritsch being a subordinate to Mr. McCambridge.

XQ19. I thought Ramsey was the General Manager. He said he was?

A. I did not say that Mr. McCambridge was general manager.

XQ20. But you said McCambridge was general superintendent of the entire building. What about that?

A. Being superintendent and general manager are two entirely different positions.

XQ21. Then Ramsey was over McCambridge and Wm. R. Warner was over both of them. Is that correct?

A. Yes.

XQ22. And both of them could have given orders to Fritsch over the head of McCambridge. Is that correct?

A. No doubt they could, but I do not think in any case it was ever done. Mr. McCambridge was responsible for the conducting of the laboratories and the help employed in the laboratories.

XQ23. If there was a formula at St. Louis and if this product was being manufactured there, why should Fritsch waste his time and the company's money experimenting with this product at that time?

By Mr. Bradford: Objected to as immaterial and irrelevant, the witness' opinion on this point can have no bearing upon the facts.

A. I do not know why Mr. Fritsch should have wasted the firm's time and money, but it was done and at the same time he was trying to imitate a product manufactured by Parke-Davis & Co., known as Syrup of Phenolthalein Comp., and had a bottle of Parke-Davis & Company's preparation there.

By Mr. Rawle: The last part of the answer is objected to as showing the bias of the witness, being the plaintiff's employee.

XQ24. Then you would have us believe that Wm. R. Warner & Co., in the latter part of 1908 was spending money in experiments on a chocolate quinine preparation when all they had to do was to send to the St. Louis laboratory and get a working formula there under which another corporation, the Pfeiffer Chemical Company, had been making up this product. Is that correct?

Objection repeated.

A. It is a matter of indifference to me whether Wm. R. Warner & Co. had a working formula with the Pfeiffer Chemical Company in St. Louis or not. The experimenting was done; and the Quin-Coco was shipped to Philadelphia from St. Louis, before the working formula came from St. Louis to Philadelphia.

XQ25. Can you give any reason for such unbusiness-like foolishness?

Objected to as incompetent, immaterial and irrelevant.

A. It was not my business to do so. That rested with the general manager.

XQ26. No, but I am asking you whether you can now give any reason for such foolishness?

Same objections.

A. No.

XQ27. Prior to the latter part of 1908 for how many years had you been working in that same laboratory?

A. From December, 1905, until December 31st, 1908.

XQ28. Fritsch said that he went to Atlantic City after making these experiments in the early part of 1908. Don't you believe that he might have slipped off there over Sunday, which so many people do, without your knowing it?

A. Undoubtedly, but over Sunday is not a week's vacation, or, as he terms it, a little vacation.

XQ29. Did you know of experiments of Warner in 1907 on a chocolate quinine preparation?

A. No.

XQ30. What other helpers besides you were there in the laboratory under Fritsch?

A. There were no helpers in the laboratory directly under Fritsch. Mr. McCambridge had complete charge of the help in the laboratories.

XQ31. And just you and Fritsch ran the laboratories. Is that right?

A. I did not say that.

XQ32. Fritsch said there were three helpers. Is that correct?

A. Yes, he had three helpers.

XQ33. Have you any doubt about that?

A. No.

Cross-examination Closed.

Re-direct-examination.

By Mr. Bradford:

RDQ34. Who were these helpers besides yourself?

A. Walter Cline, and I can't remember the name of the other young fellow.

RDQ35. Were these helpers in the laboratory with Fritsch while McCambridge was in charge?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant and as cross-examination of the plaintiff's own witness.

A. Mr. Fritsch had no direct helpers during the time Mr. McCambridge was superintendent of the laboratory, each helper being under the control of Mr. McCambridge.

RDQ36. But were these men in the laboratory? I am referring to Mr. Cline and the other helper, while Mr. McCambridge was there?

A. Yes.

RDQ37. And did they all remain after Mr. McCambridge left?

A. Yes.

RDQ38. Was Mr. Cline and the other fellow in the laboratory when you left the laboratories to go on the road December 31, 1908?

A. Mr. Cline only was in the laboratory when I left, December 31, 1908, as Mr. Fritsch's helper.

RDQ39. Counsel for defendant asked you if you are still in the employ of Eli Lilly & Co. You answered that you are. Have you been offered employment by any other concern since you last testified in this case? If so, by whom?

A. Not directly.

RDQ40. Have you been indirectly?

A. Yes.

RDQ41. By whom?

A. I would rather not answer.

Deposition Closed.

ROBERT J. GROVES.

By MR. RAWLE: Notice of a motion to strike out all of the depositions taken from October 3rd to October 30th, on seven consecutive days, so far as they are not proper for rebuttal.

By MR. RAWLE: Mr. Rawle desires to place upon the record two notices from plaintiff's counsel as follows:

Washington, D. C.,
October 12, 1916.

Francis Rawle, Esq.,
West End Trust Bldg.,
Philadelphia, Pa.

Dear Mr. Rawle:

In re Lilly v. Warner;

I hope to begin the examination of witnesses in Detroit, at 10 A. M., Wednesday the 18th instant, before Special Examiner Riordon. Among the witnesses

to be examined in Detroit are: J. Frank Hinton; J. A. Grimaldi; Mr. Bartlett of the Park, Davis Company (I do not have his initials); O. J. Berkley, of Ann Arbor; and perhaps one or two others whose names I do not at this time have.

We will then proceed to Saginaw, Michigan. The names of the witnesses, as furnished to me, at Saginaw, are: Mr. Martin Kessel; Mr. J. L. Bannister; Mr. William Heim; and we may possibly recall the witnesses who testified for us before in this city.

We will then go to St. Louis, where I will take the depositions of Mr. Myers and Mr. Van Dale, of Myers & Van Dale, perfume manufacturers; also Mr. Myers, of the Myers Drug Company; and Ardie Odell, of Union City, Mo.

We will then go to Indianapolis, where we will take the depositions of Mr. J. K. Lilly; Mr. Charles J. Lynn; Mr. Bivins (I do not have Mr. Bivins' initials, but he is a chemist employed in the Lilly laboratories); Mr. G. A. Lavison, of Memphis, Tenn.; Mr. John E. McCambridge, of Chicago, Ill.; possibly Mr. John E. McCambridge, Jr., of Des Moines, Iowa; and possibly Mr. Charles C. Crater, of Chicago; also Mr. W. J. Tomlinson, of Peoria, Ill.

It may be that several of these witnesses will not be called for the reason that I have been unable to have any conference with them and am not certain as to whether the evidence they can give will be rebuttal or not. It is also possible that we may have to call some witnesses whose names are not given, because I do not have them, in order to save another trip.

I do not know the conditions of the health of Mr. Edward Collins, of Memphis, Tenn., at this time. If he has sufficiently recovered from his illness to come to Indianapolis, I shall ask him to come there and give his deposition.

After the Indianapolis depositions are closed, I will have three or four witnesses to examine in the East, either here or in Philadelphia. These will prob-

ably be Mr. Frank M. Ramsey; Mr. Watson, of Bristol, Pa.; and Mr. Groves.

Should anything occur to change my plans between now and Saturday night, I will wire you; but if you do not get a wire before Saturday afternoon, you may know that we will be in Detroit ready to start Wednesday morning.

Yours very truly,

EWB/McB E. W. BRADFORD.

Washington, D. C.,
October 20, 1916.

Francis Rawle, Esq.,
West End Trust Bldg.,
Philadelphia, Pa.

Dear Mr. Rawle:

Your telegram received, and shortly after it came, I received a telegram from Mr. Winchester, in Memphis, that Mr. Lavison would be in Indianapolis Monday for the purpose of testifying, but that Mr. Edward Collins is still unable to come.

I feel that I am obliged to proceed with the taking of Mr. Lavison's deposition Monday afternoon. The fast train from the East arrives in Indianapolis, via Pennsylvania, at 12:10. I will wait until 2 o'clock for you, and this will enable you to leave Philadelphia late Sunday evening.

I also expect to examine Mr. John E. McCambridge, of Chicago, in Indianapolis, and hope to have Mr. William J. Tomlinson of Peoria, Ill., and Mr. Frank Green of Atlanta, Ill. I have as yet, however, no assurance that either of these gentlemen will be present, but I am hoping that one or both of them will come.

The name of Mr. Frank Green is one that was not included in my letter of the 12th.

I am also hoping to have Mr. C. F. Allen, of Chicago, but have been unable to get in touch with him and do not know where he is or whether we will be able

to have him either in Indianapolis or in Detroit next week. He is also a prospective witness whose name I did not have when I wrote you on the 12th.

Another possible witness is Mr. J. E. Bolenbaugh, of Columbus, Ohio, but I do not know anything about him, or whether he will be called, as I have only been given his name and have no report on whether or not he will testify or whether or not he knows anything that we desire to put in the record.

I am merely giving you these names so that you will have the names so far as I can give them to you.

You understand that this is purely informal and only to acquaint you with the names of possible witnesses in order that I may keep faith with you in every respect to the full limit of my ability.

I have this suggestion to make in reference to Monday. If it is not convenient for you to be in Indianapolis Monday, I will examine Mr. Lavison and Mr. McCambridge in direct-examination, and hold them over for you to cross-examine Tuesday morning. Mr. Riordon will take these depositions on his machine, so that they will be written out in full and you will have an opportunity to read them over.

Mr. Lavison's deposition will be in the nature of corroborating some of the statements by Mr. Kelton. Mr. McCambridge's deposition will be in the nature of rebutting the deposition of Mr. Harry Fritsch. If you are not present Monday afternoon, I will note that your absence is unavoidable and that the right to object and to cross-examine is reserved to you, the same as if you were present.

Yours very truly,

EWB/McB E. W. Bradford.

Defendant's counsel desires further to state upon the record that six of the persons noticed as witnesses were not called are former employees of defendant company, viz: J. E. McCambridge, Jr.,

Charles C. Crater, Frank Green, J. Frank Hinton, A. J. Berkeley. This is in addition to six other witnesses called during the last seven days who are all former employees of the defendant company.

By Mr. Bradford: The notices given to counsel for defendant were of an informal character, and in this form, because of the understanding between counsel that formal notices would not be required. Notice is made of the fact that during the taking of testimony for defendant no formal notice was ever given by counsel for defendant to counsel for plaintiff of the examination of any witnesses, no names of witnesses were given in advance of the time of their examination, with the exception of one expert and the principals, that is, the two Messrs. Pfeiffer, in defendant's case, and these were given in an oral interview and in answer to a request by counsel for plaintiff for the names of witnesses. Counsel for plaintiff is therefore unable to place of record the names of all of the parties counsel for defendant may have at some time or other have had in his mind as possible witnesses. The letters above placed of record state plainly that several of the names given are the names of possible witnesses, and that all of them might not be called and that others not named might be called. All these names were given counsel for defendant because of his insistent and persistent demands for the names of plaintiff's witnesses, both orally and by letters, and his statement that he would not agree to go on with the case until the names were furnished him. No point is seen in placing this matter of record and particularly emphasizing the fact that some of our witnesses were formerly in the employ of the defendant, as their depositions of record already show this fact. It is not supposed that counsel by this notice intends to intimate that because men have

formerly been employed by defendant they are thereby disqualified to act as competent and truthful witnesses in this case.

It is further noted of record that our failure to proceed on the date stated in any original letter was at the urgent request of counsel for defendant, solely for his accommodation, and at considerable inconvenience, trouble and expense to plaintiff and its counsel.

By Mr. Rawle: Mr. Rawle raises no technical question as to sufficiency of notice or informality thereof. He desires to place the notice on the record solely for the reasons just mentioned by him.

By Mr. Bradford: Mr. Bradford desires to add that he has verbally stated to counsel more than once that in giving him these names he has given him the names of all persons suggested to him who might possibly be called, many of whom he had never seen or had an opportunity to interview, and no information as to what, if anything, they might be able to testify, but in abundance of caution the names were included in order that counsel might have fair notice in the event they were called. The placing of this notice of record is therefore believed to be unfair and uncalled for.

Adjourned subject to notice and agreement of counsel.

Washington, D. C., Nov. 5, 1916—11 a. m.

Met pursuant to notice and agreement of counsel.

Present:

MR. E. W. BRADFORD, on behalf of plaintiff; and
MR. FRANCIS RAWLE, on behalf of defendant.

H. D. ASHTON, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. H. D. Ashton; age 64; Alexandria, Virginia; retail druggist. I have been in the retail drug business in Alexandria, for myself, nine years. I have been in the retail drug business altogether approximately thirty-five years.

Q2. Do you know a traveling salesman for Wm. R. Warner & Co., by the name of Victor J. Moon?

A. I have known Mr. Moon probably three or four years, about four years. He calls at my store and solicits my trade for Wm. R. Warner & Company's goods.

Q3. Among other items has Mr. Moon ever solicited your order for an item called Quin-Coco, and if so, what did he say to you about this item?

A. Yes, he solicited my order for Quin-Coco on several occasions. The first time he introduced the subject by saying, "You sell Coco-Quinine, don't you," and I answered "Yes". He said I have Quin-Coco, that is a cheaper preparation, that the druggists all use and sell a great deal of it, and it costs you less money than Coco-Quinine.

Q4. Did you ever receive a prescription for Quin-Coco?

A. No, sir; I never did.

Q5. Did you ever have a customer ask for Quin-Coco?

A. No, sir.

Q6. How do the doctors write the prescriptions that come to your store, for this preparation?

A. Coco-Quinine.

Q7. How do your customers ask for this preparation in calling for it over the counter?

A. They always ask for "Coco-Quinine".

Direct-examination Closed.

By Mr. Rawle: The entire deposition is objected to as not proper for rebuttal, the objection being by consent of counsel entered at the end of the examination-in-chief.

No cross-examination.

Deposition Closed.

H. D. Ashton.

George Martin, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. George Martin; age, 60th year; 1709 Jefferson St., Philadelphia, Pa.; Manager of the Girard Company, manufacturers of pharmaceuticals.

Q2. Are you the same George Martin who was formerly connected with the Wm. R. Warner & Co., and if so, when and in what capacity were you connected with that firm?

A. I am the same George Martin. I was with them

for about seven years and left them in January, 1909. I was assistant to the manager, Mr. Frank Ramsey.

Q3. Who was the custodian of the formulas while you were with that house?

A. Mr. Ramsey.

Q4. Do you have any recollection of instructing Mr. Harry Fritsch, the gentleman who is here present, during the spring of 1908, or the year 1907, to make experiments in an effort to reproduce Lilly's preparation Coco-Quinine?

By Mr. Rawle: Objected to as not proper for rebuttal; because it does not appear that it was any part of the witness' duties to give such instructions, and, therefore, the evidence is purely of negative value.

A. No, I have not.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiver of objections):

XQ5. Were not your sole duties to take charge of orders and send them up to the laboratories to be filled? I am referring to 1907 and 1908.

A. That was part of my duties.

XQ6. Did not orders consist of ordinary orders for articles of the lines that the concern was selling; also buyers' name orders which were orders specially made out for given concerns, with their name on the package or label, and special orders on your own formula or on the particular person's private formula, which last orders were filled for the particular person sending them in?

By Mr. Bradford: Objected to as not cross-examination and as irrelevant and immaterial.

A. That was part of my work, but I want to say that my end of the private formula business consisted

of private formulas for compressed tablets, liquids, and buyers' named goods. Mr. Ramsey made and kept all pill formulas, either private or those belonging to the firm.

XQ7. And what other department of the business did you attend to in those two years?

A. Well, I had charge of the complaint department, complaints in reference to the goods, reference to a miscarriage of shipments, the finishing off of the goods, looking after the printing for special formulas, employing some of the help and a little of everything as assistant to Mr. Ramsey.

XQ8. But the chief bulk of your work was in the order department, was it not, that is, taking in orders and sending them up to the sixth floor to be filled, to be attended to?

A. Yes, we might call that the principle part of it.

XQ9. If Mr. Warner had seen fit to direct Fritsch to experiment on a chocolate quinine preparation, would it have been done?

A. Sure.

XQ10. And such an order might have gone from Ramsey and would have been obeyed?

A. Yes.

XQ11. McCambridge's duties lay all over the building, did they not?

A. Yes.

XQ12. And the laboratory occupied the entire sixth floor with about forty feet front on Broad Street and one hundred and twenty feet back to a rear street, did it not?

Objected to as not cross-examination, as immaterial and irrelevant.

A. About that.

XQ13. And there were about twenty to twenty-five employees working in this big room, were they not?

Same objection.

A. Yes, I guess there were.

XQ14. And Fritsch could easily have experimented on some preparation without McCambridge knowing it if Fritsch had had his orders from headquarters?

Same objection.

A. Yes, that could be done.

XQ15. And is it not true that the organization was not very systematic but that the duties of different officials were changed and varied and interlaced, more or less, from time to time?

Objected to as not cross-examination, an effort by counsel for defendant to make witness his own, and as immaterial and irrelevant.

A. I will say this, there was considerable conflict between the heads of the departments throughout the laboratory.

XQ16. You have said that part of your work was to receive the orders and send them upstairs. After Messrs. Pfeiffer came to Philadelphia in 1908 did orders come in for Searle & Hereth items?

Same objection.

A. I imagine they did. I would not say positively. There were some of them later on. It was some little time before they stocked up and brought the stuff on from St. Louis.

XQ17. That is it may have taken a month or two?

Same objection.

A. Yes.

XQ18. But is it not true that as soon as Messrs. Pfeiffer came to Philadelphia they were practically distributors of Searle & Hereth goods?

Same objection.

A. Yes.

XQ19. I hand you a Searle & Hereth price list, 1908-9. Please state whether or not you saw a copy of

this S. & H. price list about the time that the Messrs. Pfeiffer came to Philadelphia or soon thereafter?

Same objection and protest made against further examination along this line, being an attempt to examine witness as a witness for defendant and in plaintiff's time and at plaintiff's expense.

A. Yes.

XQ20. And as being in charge of the order business of the concern at that time you were ready to take orders for items in this price list, were you not?

Same objection.

A. Yes, orders were received for these goods.

XQ21. Does this catalogue include the preparation called Quin-Coco, Searle & Hereth?

A. Yes, it does.

The book shown the witness is "Complainant's Exhibit, Pfeiffer, Searle & Hereth Catalogue, 1908, 1909".

Cross-examination Closed.

Deposition Closed.

GEORGE MARTIN.

Adjourned subject to agreement of counsel.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 1355.

THE ELI LILLY AND COMPANY, a corporation,
Plaintiff,

vs.

WM. R. WARNER & COMPANY, a corporation,
Defendant.

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON. } *ss.*

I, Charles E. Riordon, a Notary Public, within and for the District of Columbia, duly appointed Special Examiner by order of Court of record in this cause, do hereby certify that the foregoing depositions of witnesses on behalf of the plaintiff in the above entitled cause, were taken before me pursuant to notice and agreement of counsel as follows:

At Indianapolis, Indiana, Oct. 23rd and 24th, 1916,
G. A. Lavison
John E. McCambridge.

At St. Louis, Missouri, Oct. 25th, 1916,
Wm. S. Garvin
Ardie Odell
John Van Dale
Rudolph A. Meyer

At Saginaw, Michigan, Oct. 26th, 1916,
Wm. Heim
Martin A. Kessel.

1022 Certificate of Special Examiner.

At Detroit, Michigan, Oct 27th and 28th, 1916,
James E. Bartlett
Joshua E. Bolenbaugh
Joseph A. Grimaldi
Chas. F. Allen.

At Philadelphia, Pa., October 30th, 1916,
Earl R. Peabody (Recalled)
Harry Fritsch
Frank M. Ramsey
Maurice W. Watson
Robert J. Groves.

At Washington, D. C., November 6, 1916,
H. D. Ashton
George Martin.

That each of said witnesses was by me first duly sworn in accordance with the law, before the commencement of his testimony; that the testimony of said witnesses was reduced to writing by myself upon a typewriting machine from the dictation of said witnesses; that the examination of said witnesses was conducted by Mr. E. W. Bradford, attorney for plaintiff, and Mr. Francis Rawle, attorney for defendant, as appears in the record; that the deposition of each of said witnesses was read over by or to him and signed by him in my presence; that I am not of counsel or attorney or connected by blood or marriage with either party to this cause and that I am not interested directly or indirectly in the matter in controversy or in the result of this suit.

I further certify that the exhibits placed in evidence before me in the course of the examination of said witnesses were duly marked by me and in accordance with stipulation of counsel retained by the plaintiff who introduced same.

In testimony whereof I have hereunto set my hand and seal this 6th day of November, 1916.

CHARLES E. RIORDON,
(Seal) *Special Examiner.*

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 1355.

THE ELI LILLY AND COMPANY, a corporation,

vs.

WM. R. WARNER & COMPANY, a corporation.

Testimony taken on behalf of complainant in the above entitled cause pursuant to notice to counsel for defendant and also pursuant to agreement by and between counsel for the respective parties, before A. C. Rice, a Notary Public, at the office of Bradford & Doolittle, Rooms 1104-5 Fletcher Trust Building, Indianapolis, Indiana, beginning at 11 o'clock A. M. Monday, November 27, 1916.

Present:

MR. E. W. BRADFORD, for complainant.

MR. FRANCIS RAWLE, for defendant.

MR. FRANK E. GREEN, being called as a witness on behalf of complainant, being first duly sworn, in answer to interrogatories by Mr. Bradford testifies as follows:

Q1. Please state your name, age, residence and occupation?

A. Frank E. Green; residence, Atlanta, Illinois; age, 37; occupation, retail druggist.

Q2. How long have you been in the retail drug bus-

iness and what was your occupation prior to the time you entered the retail trade?

A. I have been in the retail business at Atlanta, Ill., since a year ago today. Before that I was on the road as a traveling salesman for Wm. R. Warner & Company. I worked for them in this capacity from about June 23rd of 1913, until September of 1915.

Q3. Prior to the time you went to work for them what were you doing?

A. Prior to the time I went with Wm. R. Warner & Company I was employed by the United States Pharmaceutical Co. of Chicago, as a traveling salesman for about two years.

Q4. Prior to the time you were with the United States Pharmaceutical Company, what were you doing?

A. I had been in the retail business prior to that time.

Q5. When you were employed by the Wm. R. Warner & Company, from whom did you receive your preliminary instructions?

MR. RAWLE: The examination having gone so far before Mr. Rawle's arrival from the train and without any objection on his part, Mr. Rawle objects to the question as not proper for rebuttal, the subject matter having been fully gone into on the plaintiff's *prima facie* case and gives notice of the motion to strike out so much of the testimony of this witness as he shall object to on the ground that it is not proper for rebuttal.

A. From Mr. McNulty.

Q6. How were these instructions conveyed to you?

A. Verbally. Mr. McNulty met me and traveled with me three days, in the meantime giving me his instructions along with his selling the trade and showing me how to sell, first going over the line in the hotel before we started and giving me general information.

Q7. Did you have a list similar to the list I hand

you, which is marked "Complainant's Exhibit, Document No. 3"?

A. Yes, sir.

Q8. What was this list known as by you and what use was made of it?

MR. RAWLE: Objected to by Mr. Rawle, unless the name was made known to him by some authorized person.

A. It was commonly spoken of as "The Replacer List".

Q9. How was it used?

A. It was used as showing comparative prices of the products of Warner manufacture and Searle & Hereth, with the prices of similar products of other manufacturers.

Q10. What do you mean by the term "replacer"?

A. Well, my conception of the definition of the word "replacer" is: an item that is similar in character to any item of another house but sold to the retailer under the individual firm's own title or name.

Q11. Referring to the item near the bottom of page 1 of this list, called Coco-Quinine, what do you find on the list as the replacer for Coco-Quinine?

A. Quin-Coco, Part 3 S. & H.

Q12. What information does this list give to you respecting these two items?

A. It gives the comparative price, the Lilly price and the price of Quin-Coco in like quantities.

Q13. What else, if anything, does it indicate?

MR. RAWLE: Objected to, together with all preceding questions in reference to this exhibit as not proper for rebuttal and as irrelevant.

A. One would be that they are similar products and can be used one in place of the other.

Q14. Mr. McNulty, when called as a witness for defendant in this case, testified, beginning with his answer to Q9, on page 95, particularly in answer to Q11,

that if any salesman should suggest to a retail druggist that he could supply one of the Warner articles in the place of a similar article supplied by another house, when the other was called for, by prescription or a customer, that he would not be an honest salesman and in answer to Q12 that if any salesman followed this practice and it was called to his attention, he would inform him that it was not the policy of the house to continue practices of that kind and warn him against repetition with the penalty of being dismissed. Is, or is not, this testimony of Mr. McNulty consistent with his practices in teaching you the proper methods of selling their goods?

MR. RAWLE: Objected to as not proper for rebuttal and because the only proper question is to ask what Mr. McNulty said to him.

A. Well, I would say not all together. That it was the inference, if not his direct suggestion, that certain items be sold as replacers for other certain items of other manufacture.

Q15. From what did you draw such inference?

MR. RAWLE: Same objection.

A. His showing of the items; sometimes comparing its general appearance, and the formula in many instances, as compared with other formula; as being the same in medicinal consistency and therapeutic value, and more profitable to the retailer or dispenser.

Q16. You mean that this was Mr. McNulty's practice in selling the Warner line in your presence?

MR. RAWLE: Same objections.

A. Yes, in many instances.

Direct-examination Closed.

Cross-examination.

MR. RAWLE (not waiving objections):

XQ17. How far is your residence, Atlanta, Illinois, from Indianapolis?

A. It is about 200 miles via Bloomington.

XQ18. Who first spoke to you about testifying in this case?

A. Mr. West, the Eli Lilly and Company salesman. He travels Central Illinois.

XQ19. When did he speak to you about it and how often?

A. He has spoken to me about it on two occasions. Once before your sitting in St. Louis he asked me to go there and I asked to be excused. I told Mr. West that the discontinuance of my relations with the Pfeiffer people, Warner people, wasn't particularly pleasant and while that was true, I declined to go, more for the reason that I didn't want to appear to be getting petty revenge for any mistreatment that I might have received at their hands. And then some two or three weeks ago he instructed me that testimony would be taken in Indianapolis soon and wanted me to come here to tell what I knew in the case.

XQ20. What motive led you to take so much trouble?

MR. BRADFORD: Objected to as immaterial and irrelevant.

A. I had no motive to take the trouble. It was a matter of wanting to get at the facts as Mr. West told me in regard to the case in hand and what they wanted was the facts and that the testimony, if wanted, could be had, and they would prefer to have me come here. I might add that it has bearing on the subject that I declined to go to St. Louis for a reason, a reason directly opposite to what might be inferred from the question, namely that I declined to go because I didn't wish to have the William R. Warner Company feel that I wanted to give testimony against them.

XQ21. Then I understand you to say that you have consented to travel some 400 miles and spend at least two nights and a day from business without any other motive than to get at the facts in the case between two

concerns with whom you have nothing to do? Is that correct?

MR. BRADFORD: Same objection.

A. I have absolutely no motive of my own.

XQ22. When you left the employ of Warner & Co. did you resign or were your services dispensed with?

MR. BRADFORD: Same objection.

A. They were dispensed with.

XQ23. And you had some little trouble with them on settling your account and threatened to sue?

MR. BRADFORD: Same objection and as immaterial, irrelevant and not cross-examination.

A. I did.

XQ24. And the account was settled, without suit?

MR. BRADFORD: Same objection.

A. It was settled.

XQ25. Did you receive from McNulty a copy of the "Salesman Confidential"?

MR. BRADFORD: Same objection.

A. I do not know whether I received it from McNulty or received it from the office, before I left the office.

XQ26. What I want to know is, did you have a copy?

MR. BRADFORD: Same objection.

A. I did.

XQ27. At the start, and did you have it continuously throughout your service?

MR. BRADFORD: Same objection.

A. I did.

XQ28. Did you carry it around with you all the time as part of your equipment?

MR. BRADFORD: Same objection.

A. I did.

XQ29. Did you read it pretty carefully?

MR. BRADFORD: Same objection.

A. I read it as carefully as I knew how to read it.

XQ30. I call your attention to the matter printed on pages 86 and 87 of this particular copy relating to "What a salesman should know" and "The Salesman's Creed" and ask you whether you read that printed matter?

MR. BRADFORD: Same objection.

A. I did.

XQ31. What was your territory at the start?

MR. BRADFORD: Same objection.

A. Northwestern Nebraska.

XQ32. Was that all through the same territory?

MR. BRADFORD: Same objection.

A. I continued until practically the first of October of 1913.

XQ33. To what territory did you change?

MR. BRADFORD: Same objection.

A. To central Illinois.

XQ34. And continued there to the end?

MR. BRADFORD: Same objection.

A. Yes, sir.

XQ35. How many drug stores are there in your town?

MR. BRADFORD: Same objection.

A. There are two.

XQ36. What population?

MR. BRADFORD: Same objection.

A. Fifteen hundred, approximately.

XQ37. By the word mistreatment, which you used in giving your reason for not going to St. Louis, I take it that you mean nothing more than that there was some

final controversy at the settlement as to whether you were entitled to your commissions for the coming year. Was that correct?

MR. BRADFORD: Same objection.

A. No, sir; that isn't correct. There was more. The mistreatment, if I may use the word, consisted more in the summary dismissal, without notice and without apparent cause.

XQ38. Doesn't your contract with the house, which was in writing, provide that either party had the right to terminate it at any time by written notice?

MR. BRADFORD: Objected to as incompetent, the contract itself being the only competent evidence on this point. It is also noted that counsel for defendant is using the contract itself for propounding the question and expecting the witness to answer without reference thereto.

MR. RAWLE: I have his contract in my hand. I am willing to produce it but it seems unnecessary to cumber this record. I am perfectly willing to show it to plaintiff's counsel.

A. Yes, sir. In that event the contract is still in force, as I have never received that notice in writing.

XQ39. But when Mr. Ritayik verbally discontinued your services for the house, you accepted the situation, did you not?

MR. BRADFORD: Objected to as immaterial and irrelevant.

A. Well, it is hard to sell goods without samples. Mr. Ritayik at the last point, namely Mason City, Illinois, took the samples and sent them in by express to the Pfeiffer Chemical Co. or Wm. R. Warner & Company.

XQ40. And on November 22, 1915, you accepted $61.28 in full settlement of all claims, did you not?

MR. BRADFORD: Same objection.

A. I did. I might add that I did so, as I thought the attorneys' fees and the trouble would be worth more than the difference between that and what I had coming to me.

XQ41. By your addition to your answer to my question, I am compelled to ask you what the difference was?

MR. BRADFORD: Same objection.

A. Well, sir, offhand, I can't tell you, but I think that it was as much as I got. My claim was for $175.00 and some cents and I found there was an error, which Mr. Ritayik and I found of some $20.00, I think, and certain amounts claimed by him not due on possible lost accounts. It is my remembrance that the total amount was somewhere around $130.00 to $140.00. I simply accepted the settlement as the best way to close an unpleasant matter.

Cross-examination Closed.

Re-direct-examination.

By MR. BRADFORD:

RDQ42. Did Mr. McNulty or any one else connected with the house of Wm. R. Warner & Co., ever call your particular attention to any particular paragraphs on pages 86 and 87 of this Salesman's Confidential?

A. No, sir; not to my remembrance.

RDQ43. Has your testimony in direct-examination been influenced in any degree one way or the other by your recollection of this unpleasant occurrence, which counsel for defendant has insisted on having made of record and if it has been influenced, in which direction?

By MR. RAWLE: Objected to as entirely improper. It is for the Court to weigh the evidence and not the witness himself.

A. The evidence given has not been influenced in any way. The position I took with Mr. West in regard to going to St. Louis, as well as coming here, is evidence

of the fact that I treated the former relations and circumstances and feelings as closed, which fact is further evidenced by the purchase of certain goods at sundry times from the Warner Company, also by the fact that I have absolutely had no relation with the Lilly Co.

RDQ44. Did Mr. West or anyone else in behalf of the Eli Lilly & Co. ask you or suggest to you that in giving testimony you should state anything but actual facts?

A. No, sir; they did not.

Deposition Closed.

FRANK E. GREEN.

C. J. THURMAN, being recalled, as a witness, on behalf of plaintiff, in answer to interrogatories by Mr. Bradford, testifies as follows:

Q1. You are the same C. J. Thurman who has testified heretofore in this case?

A. Yes, sir.

Q2. In your former testimony you testified that Mr. Henry Pfeiffer traveled with you at different times, when you were on the road selling goods and that he participated in the efforts to sell goods to many customers. Is this correct?

A. Yes, sir.

Q3. Mr. Henry Pfeiffer when testifying as a witness for plaintiff stated in answer to Q24 (page 72) that if any salesman had suggested to retail druggists that he should buy Quin-Coco and supply it on prescriptions or sales when Coco-Quinine was called for, that it would have been contrary to his orders and his teachings and in violation of the selling rules of the house. Please state whether in your experience, when traveling with Mr. Pfeiffer, anything occurred in your presence inconsistent with the statement thus made by Mr. Pfeiffer?

A. Mr. Pfeiffer did participate with me in selling several different items which might be sold as replacers and substitutes for different items, namely Vogue Perfume, which could be sold as a replacer for Jickey and another item which I remember very distinctly we sold a great deal of was Pitcher's Castoria to be sold on calls for Castoria (Fletcher) as a replacer for "Castoria".

MR. RAWLE: I object to the answer as not a statement of a fact but as a statement of an inference.

Q4. What did Mr. Pfeiffer ever say in your presence to any retailer, when soliciting an order for the perfume, Vogue?

A. Well, I remember in one instance Mr. Pfeiffer and I sold the Bennett Co. in Omaha, to a Mr. Snyder, who was the buyer for this company, one gallon of Vogue. He recommended to Mr. Snyder (he and I together), that this odor was exactly like Jickey and could not be told from the Jickey odor. Mr. Snyder had quite a trade on Jickey and through the efforts of Mr. Pfeiffer and myself he bought one gallon of Vogue, which was a very unusual order for Vogue.

Q5. What is the "Bennett Company" you have referred to?

A. The Bennett Company was a department store. It had a drug or toilet department. Mr. Snyder was the buyer for this department.

Q6. Why do you remember this incident?

A. Well, because I had called on Mr. Snyder frequently and had tried on several occasions to sell him this Vogue odor, but never was able to sell him until Mr. Pfeiffer made the trip with me and called on him with me and through the combined efforts of Mr. Pfeiffer and myself, we succeeded in selling him one gallon of this Vogue odor.

Q7. Do you remember how long ago this was?

A. No, I don't remember how long ago it was. The

Bennett Co. have been out of business quite a few years and they were succeeded by the Orkin Bros. and later succeeded by the Burgess-Nash Co. I have no way of remembering just when it was. I remember the occurrence very distinctly. Don't remember anything about the date.

Q8. Do you remember any specific statements made by Mr. Pfeiffer to Mr. Snyder?

A. Yes, sir.

Q9. Please repeat them.

A. Well, as near as I can remember, Mr. Pfeiffer stated to Mr. Snyder, inasmuch as he was selling lots of Jickey, which was a very high priced odor, he could use Vogue successfully as a replacer for Jickey and our price at that time being $36.00 a gallon, we figured out to him how much money could be saved selling Vogue at the price Jickey was sold for per ounce.

Q10. Do you know whether or not the gallon of Vogue was sold, for Jickey, in Mr. Snyder's department?

MR. RAWLE: Objected to as calling for hearsay as the witness cannot possibly testify as to his own knowledge as to what became of that gallon of Vogue.

A. The Vogue was disposed of, because I had a conversation with Mr. Snyder the past year in regard to the sale of this Vogue and he informed me that after so long a time the Vogue was disposed of.

Q11. Did he ever speak to you about it on succeeding trips, when you called on him?

MR. RAWLE: Objected to as calling for hearsay.

A. Yes, sir.

Q12. What did he say to you about it on those trips?

MR. RAWLE: Same objection.

A. He stated that he was having trouble disposing

of it as Jickey. That it did not seem to be exactly the same thing as Jickey. He spoke about it on several occasions.

Q13. Was it a frequent or an infrequent occurrence for Mr. Pfeiffer to follow such practices as you have just suggested in his endeavor to sell goods?

MR. RAWLE: Objected to as inadmissible. The only question proper to ask the witness is as to what Mr. Pfeiffer said or did. Evidence must be retail not wholesale.

A. Well, I would say that it was rather a frequent occurrence, especially on those two particular items mentioned, Castoria and Vogue.

Q14. In the testimony of Mr. Garfield D. Merner, Mr. Merner testified in answer to Q104 (p. 154) that he had no information except by the testimony in this case of a retail druggist selling Quin-Coco on physician's prescriptions or calls over the counter when Coco-Quinine was called for. Have you knowledge of any incident or conversation with Mr. Merner inconsistent with this statement? If so, please relate it.

A. I remember one instance in the offices in St. Louis, the subject of Quin-Coco was brought up and Mr. Merner spoke of an instance where some druggist, I can't recall who it was, had dispensed so much Quin-Coco from a Coco-Quinine bottle, Lilly, that the label on the bottle had become so dirty and illegible that he asked the Lilly salesman if he could not send him a label to place upon this bottle; and he was laughing about it. This is as Mr. Merner related it to me.

Q15. Mr. Merner testified in answer to Q89 that he canceled your contract for the reason that they were not satisfied with results you were getting and that you had been for some time more or less out of harmony with them. What have you to say as to this?

A. He never told me any such thing as that. His letter to me discharging me said nothing to this effect.

Q16. What is the correct story of the severance of your relations with the Wm. R. Warner house?

MR. RAWLE: This question and the preceding question and answer are objected to as inadmissible and counsel cannot help the witness by showing friendly relations with the witness' former employer or impeach his own witness by showing that the relations were otherwise.

MR. BRADFORD: The witness is not asked to impeach himself but to explain his recollection of the facts respecting this incident insofar as they may differ from the statements made by Mr. Merner.

A. In November, 1912, I was called to Whitehall, Illinois, on account of the death of my brother. I stopped in St. Louis on my way back to Omaha. I had a conversation with Mr. Merner in regard to a raise in my salary for 1913. Mr. Merner told me at that time that they were going to hold a conference of the Board of Directors of the company in St. Louis about December 1st, that he would take this matter up with the Board of Directors and let me know, December 1st. I hadn't heard anything from Mr. Merner in regard to this proposition up to the second week in December. I wrote to him asking him what they were going to do in regard to a raise in my salary for 1913. I received a letter dated December the 13th, 1912, dictated by Mr. Merner, discharging me. As near as I can remember, the letter stated: "The matter of raise in your salary was taken up with the Board of Directors and we decided that we were not in a position to raise your salary. After going over the matter thoroughly, we have decided to make a change in your territory. Please forward your sample case and what merchandise you have to St. Louis, by freight or express and we will mail you a check to balance your salary up to January 1st, but not your expenses. We trust that you will be

able to connect yourself with some other house," (something to that effect). (Signed G. D. Merner.) This is as near as I can remember. I would like to state further that Mr. Merner never said anything to me during my visit in St. Louis in November 1912 about my services not being satisfactory to the company.

Q17. What reasons had you, if any, for expecting a raise in salary?

MR. RAWLE: Objected to as irrelevant and as needlessly cumbering the record.

A. Well, I had shown an increase in my business each year since I had been with the company and had not had a raise in salary for about five or six years and I felt that I had a raise coming to me, as I only asked for a $10.00 raise per month.

Q18. In answer to XQ118 (page 156) Mr. Merner gave as an illustration of your disposition to be out of harmony with the house a statement that you had made in a conversation at luncheon about a competitor at the St. Louis Lunch Room on the third floor of the building on the northeast corner of 4th and Locust Sts., in St. Louis. Do you recollect this incident and if so, what is your recollection of it?

MR. RAWLE: Objected to as irrelevant and improper for rebuttal.

A. I remember this very distinctly. At the time I was in St. Louis, in November, 1912, I met Mr. Johnie Van Dale, who was also with the Pfeiffer Chemical Co. at that time. Mr. Van Dale and I walked across a run-way between two of the Pfeiffer Chemical Co. buildings and we stopped about midway between these two buildings on this run-way talking and Mr. Ritayik came out where we were and stopped. Mr. Van Dale in the presence of Mr. Ritayik asked me what I thought of the Nyal line. I stated to him that I considered it the best line of its kind on the market and I was directing my conversation to Mr. Van Dale, in the presence of Mr.

Ritayik. Ritayik took no part in the conversation at that time. We talked of the Nyal, Mr. Van Dale and I, to some little extent and when we went to lunch, with Mr. Merner and Mr. Ritayik, Mr. Merner said to me at the table, "Thurman, what do you think of the Nyal line?" Of course, I knew that Mr. Ritayik had told Mr. Merner what I had said to Mr. Van Dale about the Nyal line. When Mr. Merner put this question to me, I answered it without hesitation stating to him that I considered it the best line of the kind on the market. Mr. Merner answered me by saying, "Well, if I thought that, I would sell the Nyal line." I answered Mr. Merner by saying that I could sell the Nyal line, if he felt that way about it. That was about all that was said at the table. After returning to the office this subject was brought up again by Mr. Merner. Mr. Merner said, "Thurman, I don't like the way you talked to me at lunch." And he said, "If I felt the way you do, I certainly would be selling the Nyal line." And I said, "Mr. Merner, I don't like the way you talk to me and I can sell the Nyal line," but when I left the house that same evening for Omaha, we were, as usual, good friends.

MR. RAWLE: The answer is objected to in addition to any other objection above as irrelevant and inadmissible and as needlessly cumbering the record with irrelevant matter.

Direct-examination Closed.

Cross-examination.

By MR. RAWLE (not waiving objections):

XQ19. What relation in date did the incident you have just mentioned at the lunch table and afterwards on the run-way bear to your final laying off by the company?

A. This conversation on the run-way happened before the conversation at the lunch table and I never

knew that it ever had anything to do with my discharge by the company, until it was brought up here.

XQ20. How long before you were laid off by the company did this interview at the luncheon and the run-way take place? That is what I am trying to get from you.

A. About the middle of November, 1912.

XQ21. And your final laying off by the company was on December 13, the same year?

A. The letter was dictated about December 13th, and received by me about the 15th, as near as I can remember. I tore the letter up immediately and haven't seen it since.

XQ22. In whose employ are you now and where do you work?

A. Nelson, Baker & Co., Detroit, Michigan, are my employers. My territory is a small part of Nebraska, the western half of Iowa and a part of South Dakota.

XQ23. For what other firms, if any, have you worked and in what capacity since you separated from the Warner Company?

A. I have been with the Nelson, Baker Co. ever since leaving the employ of the Warner Company.

XQ24. Your connection with the Warner Company ceased four years ago, less a month. The Messrs. Pfeiffer moved from St. Louis to Philadelphia and organized the Warner Company, as appears here, in the early summer of 1908. Do you remember that fact?

A. I remember the fact. I would not be sure of the date. I remember the fact that he moved to Philadelphia.

XQ25. Where were you working at that time?

A. Covering the entire State of Nebraska.

XQ26. How long before the Messrs. Pfeiffer moved to Philadelphia did this incident take place, as you have testified, in regard to Snyder and the department store at Omaha?

A. I don't remember.

XQ27. Could it have been a year before?

A. It could have been a year. I don't remember anything about that date.

XQ28. Could it have been two years before? Can't you give me any idea?

A. No, sir; I have no way of knowing the date.

XQ29. You are very minute in regard to your memory of everything that you said in that interview with Mr. Snyder. Why is it that you cannot give any idea of the date, even approximately?

A. The reason of my remembering this so thoroughly was from the fact that through the efforts of Mr. Pfeiffer and myself, we sold Mr. Snyder for the Bennett Department Store, in Omaha, one gallon of Vogue which was the only one gallon order that I ever placed for this odor. Naturally I remember this instance as I had tried on several occasions myself to land Mr. Snyder for this one gallon of Vogue, but had never been able to do so, until Mr. Pfeiffer assisted me in getting this order.

XQ30. The perfume called Vogue was a Mellier product, was it not?

MR. BRADFORD: Objected to as immaterial and irrelevant.

A. As far as I know, it was.

XQ31. Do you entertain any doubt on the subject?

MR. BRADFORD: Same objection.

A. I don't think there is any doubt about it. My impression has always been that the Vogue odor was originated by the Mellier people, although I may be wrong about it.

XQ32. The Mellier Company at that time was a side company of the Pfeiffer Chemical Company, was it not?

A. It was.

XQ33. And you were traveling for the Pfeiffer Chemical Company and among your other items that

you were trying to sell were perfumes put on the market under the name of Mellier. Is that correct?

A. Yes, sir.

XQ34. Did you afterwards solicit Snyder's trade for the Bennett Company on Vogue or anything else?

A. Never on Vogue, because he didn't like the odor, said that it did not smell the same, or was not the same as the Jickey.

MR. RAWLE: The last part of the answer is objected to as volunteered.

XQ35. Doesn't this enable you to fix approximately the length of time prior to December, 1908, when you and Mr. Pfeiffer talked to Snyder?

A. No, sir; it does not.

XQ36. How far have you come today to testify in this case?

A. From Omaha, Nebraska.

XQ37. When did you start from there and when do you expect to get back?

A. Left there Saturday night at 6 o'clock and expect to get back tomorrow night.

XQ38. Who invited you to come here to testify?

A. In this instance?

XQ39. In this instance?

A. Mr. Bradford.

XQ40. By mail?

A. Yes, sir.

XQ41. What person connected with the Lilly Company saw you or wrote you about it, other than Mr. Bradford?

A. No one, this time.

XQ42. You testified in this case previously in July 1915 on behalf of the plaintiff. What person in connection with the Lilly Company saw you or wrote you in regard to your so testifying?

MR. BRADFORD: Objected to as immaterial and not cross-examination.

A. I think the first letter I received was from Mr.

C. J. Lynn, General Manager of the Eli Lilly & Co. I received some correspondence from Mr. Bradford in regard to my coming here at that time.

XQ43. Has any salesman ever called upon you in regard to your testifying either at that time or today?

A. I have not talked to any Lilly salesman, recently. I talked to Mr. Caswell, who represents the Lilly Company in Nebraska, previous to my coming here in July, 1915.

XQ44. What kind of work does Mr. Caswell do for the Lilly Company?

A. Sells their entire line of goods.

XQ45. Then you mean to say that Mr. Caswell is a Lilly salesman in your territory or in part of your territory?

A. No; Mr. Caswell lives in Omaha and I live there also.

XQ46. When did Mr. Caswell talk to you about the case or discuss it with you?

A. I don't remember the date.

XQ47. Was it previously to your testifying in the case on July 15th?

A. Yes.

XQ48. Has he spoken to you about the case since you testified in it in July, 1915?

A. He has not.

XQ49. Has any other person connected with the Eli Lilly & Co., except Mr. Lynn and Mr. Bradford, spoken to you about the case or written to you about the case?

A. No, sir.

XQ50. What brand of Castoria were you selling at the time you referred to when you were traveling with Mr. H. Pfeiffer for the Pfeiffer Chemical Company? What was the name on the bottle?

A. Pitcher's Castoria.

XQ51. Were you selling in the original bottles to the druggist or to Snyder?

A. I don't think we ever sold any Castoria to Snyder. I never sold it to him.

XQ52. I asked you whether in selling this particular Castoria to anybody or Snyder or any druggist, you were selling it in original bottles or in bulk?

A. We were selling it in packages put up under the Pitcher Castoria label, manufactured by the Pfeiffer Chemical Co.

XQ53. What kind of packages?

A. Packages that retailed at 35 cents.

XQ54. Made of paper, I suppose?

A. Glass bottles in paper cartons.

XQ55. Do you call a glass bottle a package?

A. We call the finished package a package, that is the bottle inside of the paper carton.

XQ56. And the bottle and the carton both bore both the words "Pitchers Castoria". Is that correct?

A. Yes, sir.

XQ57. What size bottles were these?

A. Well, they were paneled bottles and a very deceptive looking bottle. I never measured one and would not be in a position to state what they held.

XQ58. Did they hold 2 ounces?

A. In my opinion, they held about 2 ounces, or perhaps a trifle less. I am not in a position to state what they held.

XQ59. Will you swear that they did not hold over 4 ounces?

A. Well, they had a 50 cent size. You are referring to the 35 cent size, are you not?

XQ60. Can you tell me why you, who have been selling drugs for many years perhaps of your life, can't state to the Court what the capacity of these bottles were, with some approximation, at least, to accuracy?

A. I have just stated in my answer to the previous question that, in my opinion, the bottle held about two ounces, that is, as near as I could come to it. I might have known at that time. There were different sizes.

As I stated before, they did make two sizes, 35 and 50 cent sizes, in the Pitcher Castoria. They also made a brand of Castoria under the label of the Baby Brand, which retailed for 35 cents.

XQ61. Who do you mean by them?

A. Speaking of the Pfeiffer Chemical Company, known as the Pfeiffer Chemical Co. at that time.

XQ62. Did I understand you to say that what you were selling in the way of Castoria was about a two ounce bottle or perhaps a bottle a little larger with a carton around it, both the bottle and the carton bearing the label Pitcher's Castoria? Is that correct?

A. Yes, sir.

XQ63. When the druggist who sold this Pitcher's Castoria which you sold him, came to sell it to his customers, did he sell it in the original packages in the package and the bottle as you sold it to him?

A. He did.

XQ64. Do you know how the Fletcher Castoria was put up and sold to the druggist and sold by the druggists at that time?

A. Do I know how it was put up?

XQ65. Better say, wrapped up and sold to the druggist and sold by the druggist at that time.

A. I have never opened a bottle of Fletcher's Castoria but it is wrapped in a package, very similar to the Pitchers Castoria, put out by the Pfeiffer Chemical Co.

XQ66. Don't you know that the Fletcher Castoria is put up in a wrapper and not in a carton?

A. Didn't I just state that I had never opened a bottle or taken the wrapper off a bottle of Fletcher's Castoria? I was judging from the outside appearance of the package.

XQ67. When you say a bottle of the Pfeiffer Chemical Co. product, such as you sold to the druggist and they sold, and a bottle of the Fletcher Castoria, standing side by side on a druggist's shelf, how is the latter done up?

A. Well, if I remember correctly, Pitchers Castoria put out by the Pfeiffer Company was put up in a folding carton.

XQ68. How was the other product put up as it stood on the druggist's shelf for sale? Was it wrapped up and not in a carton?

A. I think it was.

XQ69. Then if these two brands of Castoria were so dissimilar in external appearance, could a druggist sell one when the other was called for?

A. Well, our instructions to the druggist was to show Pitchers Castoria when Castoria was called for and call the attention of the customer to the fact that they were getting a larger bottle than the Fletcher brand at the same price and as an inducement to him to push this Castoria, it paid him a great deal better profit than the Castoria under the Fletcher brand and called the attention of the customer to the fact that the Castoria was originated by old Dr. Samuel Pitcher and the formula of Dr. Samuel Pitcher on the label, it being the same thing exactly as the Castoria put out under the Fletcher label.

XQ70. When you were salesman for Pfeiffer Chemical Co. and after the summer of 1909, you added the Warner & Co. to your line, didn't you have a contract that carried with it both a salary and commission, if your sales were above a certain amount?

MR. BRADFORD: Objected to as incompetent on the ground that the contract itself is the best evidence.

MR. RAWLE: I hold the contract in my hand. I do not care to encumber the record with it. I will show it to the plaintiff's counsel and he may show it to witness. The contract is shown to witness and he answers as follows:

A. Yes, sir.

XQ71. Didn't you know, without seeing the con-

tract, that you were working on a salary and commission if your sales were above a fixed amount?

A. Yes, sir; of course I did; and I have a copy of the contract.

XQ72. And, of course, if your sales increased, you would automatically have increased your income from your work?

A. Not necessarily. As my sales increased from year to year, my sales quota was advanced on two or three occasions. The only time that I ever drew any commission was one year, quite a few years ago, I drew approximately $154.00 commission.

XQ73. But in every year, if you had exceeded your sales quota, you would have drawn a commission?

A. I would.

XQ74. And you had a contract to that effect since about January 1st, 1910?

A. About that time.

XQ75. And since this contract dated about December 21, 1910, your sales quota was not raised?

A. The sales quota was raised at the time this contract was written.

XQ76. And not after that again?

A. No, sir. I would like to state further that my last year with the Pfeiffer Chemical Co., it was the custom of the company to submit to us a statement at the close of the year showing our volume of business for that year and showing all deductions for past due accounts and bills that had been charged to profit and loss, also bills that had not been shipped and paying us a commission for any excess in the amount of our sales quota. After being discharged by the Pfeiffer Chemical Co. I wrote to them for a complete statement of my business for 1912, but never received this statement.

Cross-examination Closed.

Re-direct-examination.

By Mr. Bradford:

RDQ72. Did you ever draw a commission more than one year while working for the Pfeiffer Chemical Co., I mean in excess of your salary?

A. No, sir.

RDQ73. Was your sales quota raised in your next contract thereafter?

A. Yes, sir, it was.

RDQ74. And each time that your sales reached approximately the sales quota allowed?

A. Usually the sales quota was raised.

RDQ75. In referring now to the Castoria subject. Suppose a customer came into a drug store and merely asked for a bottle of "Castoria" and did not specify Fletcher's. Would the druggist have to make the explanation you stated you instructed him could be made in making such a sale?

Mr. Rawle: Objected to as irrelevant and inadmissible and altogether improper and as calling for hearsay.

A. It would not be necessary to make any explanation in a case of this kind.

RDQ76. What could the druggist give the customer on such a call?

Mr. Rawle: Same objections.

A. He could have given him Pitcher's Castoria, put up by the Pfeiffer Chemical people.

RDQ77. I show you complainant's exhibit "Thurman Pfeiffer Chemical Co. Catalogue" and ask you to look at page 53 and state if the packages there illustrated are the packages of Castoria you have been testifying about?

A. Yes, sir. I notice here that this Castoria put out under the Baby Brand is marked to retail at 25 cents. When this Baby Brand of Castoria was first

given us for sale, it was marked to retail at 25 cents, but later was marked to retail at 35 cents and the 25 cent brand might have been continued.

Re-direct-examination Closed.

Re-cross-examination.

By Mr. Rawle (not waiving objections):

RXQ78. Is it not true that additions of new lines to the line of goods which you were selling affected the amount of your sales quota?

Mr. Bradford: Objected to as immaterial and irrelevant.

A. What do you mean by increase in sales quota?

RXQ79. When your employers gave you additional lines of products to sell for them, was it not natural for them to expect you to sell more goods?

Mr. Bradford: Same objection.

A. You would naturally think so. Yes, sir.

RXQ80. And was it not natural in this case for them to raise your sales quota?

Mr. Bradford: Same objection.

A. I would not think so necessarily, as long as they were keeping out of your reach all the time.

Deposition Closed.

After the witness was excused, he was recalled by counsel for plaintiff and the following questions asked:

By Mr. Bradford:

Q81. Did you ever have any discussion with Mr. G. A. Pfeiffer, who is here present respecting the similarity of the Vogue perfume and the Jickey perfume and if you did, please relate what was said by Mr. Pfeiffer and yourself at such discussion.

MR. RAWLE: I think it ought to appear that the opposing counsel and the witness talked in the adjoining room, before the witness was recalled.

MR. BRADFORD: I am perfectly willing that this shall appear and advise counsel for the defendant that a remark made by witness after leaving the witness room gave counsel information on which he bases the above question and it is information that he never had before.

MR. RAWLE: Objects to the further proceeding as irregular and objects to the question itself on its own merits as irrelevant and immaterial.

A. I remember having had a conversation with Mr. G. A. Pfeiffer who is present here this afternoon in regard to the similarity between Vogue perfume put out under the Mellier label and the original Jickey. Mr. Pfeiffer stated that they were identical and I spoke up and said there was a difference. Mr. G. A. Pfeiffer said: "Thurman, you can't tell one from another." I told him that I thought I could. He immediately sent down to the perfume department and had two demonstrating perfume bottles filled, one filled with the original Jickey and the other filled with Vogue, labeling one No. 1 and the other No. 2, brought them up to the office and placed them before me for my identification. After smelling the two odors carefully, I identified Jickey and Mr. Pfeiffer says: "Yes, that is correct, but you guessed it."

Q82. What was the occasion of this discussion?

A. Well, we were speaking about the similarity of Vogue to Jickey and I had always contended that Vogue was never exactly like the Jickey odor and naturally I was not selling as much of this odor as some of the other boys. Mr. Pfeiffer did this, I suppose, to prove to me that Vogue was exactly like Jickey and could be sold as such.

Cross-examination.

By Mr. Rawle (not waiving objections):

XQ83. When did this occur?

A. I have no way of knowing the dates. I remember the conversation very distinctly. No doubt, Mr. Pfeiffer remembers them.

XQ84. How long before the Pfeiffers moved to Philadelphia in 1908, did it occur?

A. I don't know.

XQ85. Might it have been a year before?

A. It might have been a year.

XQ86. Might it have been two years before?

A. I don't know.

XQ87. Where did it occur?

A. In the office of the Pfeiffer Chemical Co. in St. Louis.

Mr. Rawle gives notice of a motion to strike out all questions objected to in the deposition of this witness as being not proper for rebuttal and particularly to strike out the last questions asked after he had closed his deposition and left the room.

C. J. Thurman.

Francis E. Bibbins, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. State your name, age, residence and occupation?

A. Francis E. Bibbins; 4246 Cornelius Avenue, Indianapolis; thirty-three; director of pharmaceutical department, Eli Lilly & Company.

Q2. How long have you been in the employ of Eli Lilly & Company?

A. Nearly thirteen years.

Q3. What qualifications have you for testifying as an expert chemist on pharmaceutical matters?

A. I am a graduate of the School of Pharmacy of Purdue University, and I have spent nearly twelve of those thirteen years at Eli Lilly & Company in scientific work, pharmaceutical scientific work.

Q3. In the testimony given on behalf of the defendant in this case by Charles H. LaWall, respecting the preparation known as Coco-Quinine, and the preparation known as Quin-Coco, it was stated that the chocolate syrup in the preparation is an essential ingredient, inasmuch as it holds the quinine sulphate in suspension and aids in disguising the taste of the quinine. Have you experimented along lines which qualify you to testify on this question, and if so, what has been the result of your experiment?

By Mr. Rawle: Objected to, as not proper for rebuttal, the matter having been gone into in the plaintiff's *prima facie* case; and it is irrelevant.

A. I have made a great many experiments, and found that it is not necessary to use chocolate in a syrup to disguise the taste of the quinine sulphate, or to aid in suspending it in a syrupy medium.

Q4. Another eminent pharmaceutical chemist, George M. Beringer, was called as a witness for defendant, and testified in answer to Q14, page 477, Defendant's Record, that, in his opinion, the chocolate plays a very important function in the preparation, stating, "It is certainly essential to a palatable and satisfactory preparation of quinine for a liquid preparation to be successfully marketed." What have you to say in reply to Mr. Beringer's statements thus quoted?

By Mr. Rawle: Same objections.

A. The chocolate is not essential to make a palatable preparation. There are other substances that can be used equally as well.

Q5. Mr. Beringer stated in answer to Q29, page 481, that he had experimented along these lines, both because of his own business interests, and likewise because the subject had been referred to a Sub-Committee of the National Formulary, of which he was the chairman, and in answer to Q30, that he had made up various mixtures of quinine sulphate with various other vehicles or syrups. These he produced and introduced in evidence. I will ask you to refer to Mr. Beringer's answer to Q31, and read the same, and comment thereon in reply thereto.

By Mr. Rawle: Same objections.

A. In Mr. Beringer's experiments it seems that all his mixtures were made with flavored syrups, and without any attempt to bring the viscosity of the syrup to a point where it would suspend the crystaline quinine sulphate. In a number of experiments I have found that it is possible to make these various flavored syrups so as to retain the quinine sulphate in suspension.

STIPULATION.

It is stipulated by and between Mr. Bradford, counsel for plaintiff, and Mr. Rawle, counsel for defendant, that to each and every question propounded by Mr. Bradford, counsel for plaintiff, to this deponent, the same objections as noted to the previous questions may be had by Mr. Rawle, counsel for the defendant, without the same being noted in this transcript of the deposition, for the purpose of avoiding encumbering the record.

Q6. Have you made up samples of experiments corresponding in a degree to those made up by Mr. Beringer, having in mind the necessity of the advantage of making a syrup that will hold the quinine in suspension, and if you have, will you produce said samples?

A. I have made a number of experiments along this line, and can introduce these ten samples of various

flavors and colors, in which the quinine sulphate is suspended without the aid of chocolate.

Here I produce a sample syrup of quinine sulphate, flavored with ginger. In this sample you will notice the quinine is suspended throughout the mixture, and the product is of an entirely different color from a chocolate syrup, and the bitterness of the quinine is disguised in this syrup, and it has the same quinine content as Coco-Quinine. The disguising agent in this syrup of ginger is the same as that used in Coco-Quinine. In this sample flavored with ginger the addition of Mucilage of Quince Seed and Tragacanth have been added to the syrup to aid in the suspension of the quinine sulphate. (Referring to Plaintiff's Exhibit, Sample Syrup No. 1.)

Here we have a sample of syrup of quinine sulphate flavored with Tolu, in which you will notice the quinine sulphate is suspended. This contains the same disguising agent as in Coco-Quinine. There has been added to the syrup a small amount of gelatine and Mucilage of Quince Seed. This is also of a different color from Coco-Quinine. This is a different color and flavor from the first sample, and also from Coco-Quinine. (Referring to Plaintiff's Exhibit, Sample Syrup No. 2.)

Here we have a sample of syrup of quinine sulphate, flavored with Orange, in which you will note the quinine sulphate is suspended throughout the syrupy medium. In this sample a small amount of Gum Acacia has been added to the syrup as a suspending agent. This contains the same disguising agent as that used in Coco-Quinine, and it contains the same amount of quinine sulphate as Coco-Quinine. You will note it is an entirely different color from Coco-Quinine, and also from the other samples submitted. The flavor is different from the other samples. (Referring to Plaintiff's Exhibit, Sample Syrup No. 3.)

Here we have a sample of syrup of quinine sulphate, flavored with Coffee, in which you will note the quinine sulphate is suspended throughout the syrupy

medium. A small amount of Dextrin has been added to this syrup as a suspending medium. This sample contains the same amount of quinine sulphate as Coco-Quinine per ounce. It is of an entirely different color and different flavor from Coco-Quinine and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample No. 4.)

Here we have a sample of syrup of quinine sulphate, flavored with peppermint, in which you will note the quinine sulphate is suspended throughout the syrupy medium. A small amount of Mucilage of Quince Seed has been added to the syrup as a suspending medium. This sample contains the same amount of quinine sulphate per ounce as Coco-Quinine, and you will also note it has a green color, entirely different from Coco-Quinine, and the other samples submitted, and also a different flavor. It contains the same disguising agent as that used in Coco-Quinine. (Referring to Plaintiff's Exhibit, Sample Syrup No. 5.)

Here we have a sample of syrup of quinine sulphate, flavored with Benzaldehyde. You will note that the quinine sulphate is suspended throughout the syrupy medium. In this sample a small amount of Mucilage of Irish Moss and Quince Seed have been added to the syrup as a suspending medium. It contains the same disguising agent as that used in Coco-Quinine. It also contains the same amount of quinine sulphate per ounce as Coco-Quinine. It is of a different color and flavor from Coco-Quinine and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample Syrup No. 6.)

Here we have a sample of syrup of quinine sulphate, flavored with Peppermint and Wintergreen. You will note the quinine sulphate is suspended throughout the syrupy medium. In this sample a small amount of Mucilage of Tragacanth and Acacia have been added as a suspending medium. This sample contains the same disguising agent as used in Coco-Quinine. It also contains the same amount of quinine sulphate per ounce

as Coco-Quinine. You will note it is of a different color and flavor from Coco-Quinine and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample Syrup No. 7.)

Here we have a sample of syrup of quinine sulphate, flavored with Compounded Spirit of Orange. You will note the quinine sulphate is suspended throughout the syrupy medium. In this sample a small amount of Starch and Mucilage of Tragacanth have been added as a suspending medium. This sample contains the same disguising agent as that used in Coco-Quinine. It also contains the same amount of quinine sulphate per ounce as Coco-Quinine. You will note it is of an entirely different color and flavor from Coco-Quinine and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample Syrup No. 8.)

Here we have a sample of syrup of quinine sulphate, flavored with Cassia, Peppermint and Wintergreen. You will note that the quinine sulphate is suspended throughout the syrupy medium. In this sample a small amount of gelatine and Tragacanth have been added to the syrup as a suspending medium. This sample contains the same disguising agent as Coco-Quinine, and also contains the same amount of quinine sulphate per ounce as Coco-Quinine. You will note it is of an entirely different color and flavor from Coco-Quinine and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample Syrup No. 9.)

Here we have a sample of syrup of quinine sulphate, flavored with Peppermint, Sassafras and Wintergreen. You will note the quinine sulphate is suspended throughout the syrup mixture. In this sample a small amount of acacia and Mucilage of Quince Seed have been added as a suspending medium. This sample contains the same disguising agent as that used in Coco-Quinine. It also contains the same amount of Quinine sulphate per fluid ounce as Coco-Quinine. You will note that it is a different color and flavor from Coco-Quinine

and the other samples submitted. (Referring to Plaintiff's Exhibit, Sample Syrup No. 10.)

Q7. Will you state whether or not, in your opinion, and from your experience, any of the ten samples that you have produced constitute a satisfactory and marketable pharmaceutical preparation?

A. I think any or all of them would make a satisfactory, marketable product.

Q8. As I understand you, these samples are in all respects the same as Coco-Quinine, except that another syrup has been substituted as the coloring and flavoring medium in the place of the chocolate syrup; is that correct?

A. That is right.

Q9. Pharmaceutically and therapeutically these preparations are identical with Coco-Quinine, as I understand you?

A. They should be the same; pharmaceutically they are the same, and therapeutically they should be the same as any preparation containing crystalized quinine sulphate in the same proportion.

Q10. What is the disguising agent or the agent used to disguise the bitterness of the quinine, not only in these samples, but in Coco-Quinine?

A. An extract prepared from Yerba Santa. In fact, I have used the Coco-Quinine formula except for the chocolate syrup.

Q11. When were these samples made?

A. These samples were made in March, 1916.

Q12. Where have they been since then?

A. In the cupboard in my office until today when I brought them to this office.

Q13. Have they been subject to the summer temperatures where they have been located?

A. They have been subject to the usual changes of temperature we have in this climate during the past eight months.

Q14. Respecting the action of temperature upon such pharmaceuticals, how has the weather during the

last eight months compared with the average summer weather?

A. I don't believe that changes of temperature would have any effect on these products.

Q15. (Q14 read to the witness.)

A. As I remember, it has been the usual climatic conditions for this section of the country.

Q16. Has any effort whatever been made to protect these samples from climatic conditions, or have they been exposed to ordinary shelf conditions?

A. They have been exposed to ordinary shelf conditions?

Q17. Do you know of any reason why any one of these samples could not be taken up and by proper detail work and advertising made a legitimate competitor of Coco-Quinine?

A. I do not.

Q18. In making up these ten samples did you, or did you not, exhaust your resources?

A. I did not.

Q19. Would it be possible to make many other samples containing the same pharmaceutical merits as Coco-Quinine, and not use chocolate either as the coloring or flavoring medium?

A. In my opinion it would be possible.

Q20. Did you exhaust your resources in the employment of suspending mediums in making up your syrups?

A. I did not.

Q21. In answer to questions 33 and 34, Mr. Beringer testified respecting his samples that he did not know of any ingredient that could be added to make them satisfactory except cocoa. Do your experiments show that Mr. Beringer was mistaken in this respect or not?

A. They do.

By Mr. Bradford: Counsel for plaintiff here offers in evidence the samples referred to, and marks them Plaintiff's Exhibit, Sample Syrup No.

1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, and No. 10, respectively.

By Mr. Rawle: The same objections are made to the exhibits as made to the questions.

Cross-examination.

By Mr. Rawle (without waiving objections):

XQ22. I understand that in each of these samples you have put in an ingredient for the purpose of giving viscosity to the sample, is that correct?

A. That is right.

XQ23. In that respect the ingredient or ingredients you have put into the respective samples play the part of cocoa in Coco-Quinine, is that right?

A. That is right, except for flavor.

XQ24. But they do play the part of the chocolate or cocoa as suspending agents?

A. That is right.

XQ25. Then, in your opinion, the cocoa in Coco-Quinine is itself a suspending agent?

A. Yes.

XQ26. Then, is it not true, in your opinion, that the cocoa in Coco-Quinine plays the three-fold part of giving color, flavor, and suspending qualities?

A. That is right.

XQ27. But in all these samples you have taken two or more ingredients to play these three parts of color, taste and suspension; is that correct?

A. That is right.

XQ28. Have you used any artificial coloring in any of these samples?

A. In some of them, yes.

XQ29. Which ones?

A. In No. 5 I used the certified color called Myrtiline Green, to get that green.

In No. 7, a mixture of certified colors called Carmaline Brown.

In No. 8, a certified color of Ponceau 3 R.

In No. 9, a certified color called Naphthol Yellow-S.

These are all colors that are permitted to be used under the Pure Food and Drugs Act of 1906.

XQ30. What preservatives have you used in these samples?

A. The same preservatives as used in Coco-Quinine.

XQ31. What is that?

By Mr. Bradford: Objected to as improper.

A. It is preserved with cane sugar, alcohol and sodium benzoate.

Cross-examination Closed.

Deposition Closed.

Francis E. Bibbins.

Adjourned until tomorrow, November 28, 1916, 11 o'clock a. m.

John E. McCambridge, Sr., being recalled as a witness for plaintiff, in answer to interrogatories by Mr. Bradford, testified as follows:

Direct-examination.

By Mr. Bradford:

Q1. You are the same John E. McCambridge who has previously testified for plaintiff in this case?

A. Yes.

Q2. Since you were examined, Mr. Fritsch has been further examined, and also Mr. George Martin, and Frank M. Ramsey. Mr. Fritsch has testified that it was Mr. George Martin from whom he received the order to make the experiments in the early part of 1908, or in 1907, for the purpose of duplicating Lilly's Coco-Quinine. The endeavor has also been made to show that the laboratory was quite a large place, employing a good many people, and that experiments by Mr. Fritsch

might have been carried on without your knowledge. How large was the department in which Mr. Fritsch was employed?

MR. RAWLE: The recalling of the witness is objected to as irregular, the witness having already been interrogated, or been under examination. If the intent is to impeach any other witness called by the plaintiff, the recalling and further examination of the witness is objected to for that reason. The recital in the question of what other witnesses have said is objected to as irregular and improper.

MR. BRADFORD: The witness is recalled for no purpose except to rebut certain statements by Mr. Fritsch, a defendant employe, and a witness for defendant.

MR. RAWLE: If plaintiff's counsel elects to call an employee of the defendant and interrogate him as to facts known to him, it is not proper for plaintiff's counsel now to call another witness to impeach the testimony of his own witness, Mr. Fritsch, who is not shown, except inferentially, to have been a hostile witness, or other than a frank and truthful person.

MR. BRADFORD: Counsel for defendant well knows that he was advised before Mr. Fritsch was called of the purpose of counsel for plaintiff to subpoena Mr. Fritsch as a hostile witness, and that in order to simplify matters and avoid the subpoena being served, he consented to have Mr. Fritsch appear as a witness without the writ being issued. The other matters are for the decision of the Court.

(Q2 read to the witness by the stenographer.)

MR. RAWLE: Upon the question being read to the witness, defendant's counsel further objects to the statement in the question that Fritsch was em-

ployed to make experiments in "duplicating Lilly's Coco-Quinine."

A. That department was forty by forty-eight.

Q3. How many people were employed in this department?

A. Four.

Q4. Do you remember the names of the persons who were employed in this department at that period, that is during the early part of 1908 or 1907?

A. Harry Fritsch and Edward Ryan, who was a helper to Mr. Fritsch, a young man named Charlie, who was helper on the floor, and Mr. Groves, who was also a helper. I might say that half of that floor space was occupied by preparations which I personally made.

Q5. Were Mr. Fritsch's duties outside of this particular space or department at any time during that period?

A. No.

Q6. Was it customary for Mr. Martin to send orders for the manufacture of new preparations, or the duplication of preparations of other houses direct to Mr. Fritsch without going through your hands?

MR. RAWLE: The form of the question is objected to as highly improper.

A. All new preparations were first referred to me, then passed to Mr. Fritsch, if found that he could handle it to make up.

Q7. Was it the custom of the Warner Laboratories prior to the taking over of the business by the Pfeiffers to undertake experiments to duplicate specialties manufactured by other houses?

MR. RAWLE: Objected to for the obvious reason the custom of a firm that existed before the incorporation of the defendant corporation is not relevant or admissible, and cannot affect any right of this defendant, and is objected to as improper in form.

A. During my entire time with William R. Warner & Company, I cannot recall where we ever secured samples of other houses' goods to imitate. If we did secure samples it was because we were making the same preparations, and only wished to convince ourselves as to the equality of our own make with theirs.

Q8. An order coming to the laboratory to reproduce a specialty of any other house, or imitate a specialty of any other house would then have been an unusual occurrence in the Warner laboratories?

MR. RAWLE: Objected to for the same reasons.

A. It certainly would have been so.

Q9. Such an incident, if it had occurred, would not have been easily forgotten by the employee, would it?

MR. RAWLE: Objected to as leading, and multiplying matters as to questions already put to the witness, and for the other reasons above given.

A. Mr. Martin, Mr. Ramsey and myself would certainly have known all about it, and it could not have been easily forgotten.

Q10. What was the policy of the William R. Warner & Company respecting the rights of its competitors in specialties, I mean what was the ethical policy of the house under the old management, or prior to its acquisition by the Pfeiffers?

MR. RAWLE: Objected to because the policy, or any acts of William R. Warner & Company, a firm that carried on its business prior to the end of July when the defendant corporation was organized and took it over, is irrelevant and inadmissible, and cannot affect the rights of this defendant, and the question is objected to for other reasons as being inadmissible and irrelevant, and as having no possible connection with the issues in this case.

A. It all stood on the same ground, the only question being the quality of the finished product.

Q11. (Q10 read to the witness.) My question contemplated asking you whether or not William R. Warner & Company, under the old management, considered it ethical to imitate specialties put out by competing houses, and manufacture substitutes for such specialties.

MR. RAWLE: The above objections to the question are repeated.

A. At no time would the house consider the manufacture of a substitute of any other firm's preparation.

Q12. Defendant's counsel in his objections, and by some witnesses, has undertaken to show that prior to a certain date in 1908 William R. Warner & Company was one concern, whereas after that date it became another concern by reason of being incorporated. Do you know anything respecting this matter, and if so, will you explain?

A. Up to the time of the death of William R. Warner, Sr., about 1901, the firm was known as William R. Warner & Company. As I recall his will, it stated that he wished the firm to continue under the name of William R. Warner & Company, but if found necessary it might incorporate, but still continue under the name of William R. Warner & Company, with William R. Warner, Jr., as head of the firm. I might say that this was due to what he had really proposed to do in 1888 when the building at Broad and Wallace was erected. The sign on that building reads, "William R. Warner Company, Chemists". That was placed on the Wallace Street building when it was erected, and in the Financier of 1888 or '89 there appeared an article in which he stated it was his intention to form a corporation giving his employes the benefit of the same. This, however, for some reason unknown to me, did not materialize.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (not waiving objections):

XQ13. How many hours a day did you usually spend in Mr. Fritsch's department?

A. About four hours a day.

XQ14. What were you doing there?

A. Making preparations, and overseeing other work that was being done.

XQ15. Would it have been possible if Fritsch had received directions from the owner of the business, Mr. Warner, to make any experiment, and keep quiet about it, that he could have made such experiment without your knowledge?

A. Mr. Warner at no time went over my head to order anything done in the laboratory. In fact he insisted on me being there at all times. During my service of over thirty-one years my vacation never was more than two days at one time, and the balance of the year one day at a time, that is in all two weeks in each year. My absence from the house in that time for sickness was one-half day. I was the first in the laboratory and the last to leave, even at night when work was conducted I was the last one to lock the door, and see that the place was in good order for the following day.

XQ16. (XQ15 repeated to the witness.)

Mr. Bradford: The repetition of the question is objected to on the ground it has been fully answered.

A. Does not my answer cover that question?

XQ17. My question is whether if Mr. Warner, the owner of the business, had directed Fritsch to perform an experiment, and to keep quiet about it, it would have been possible for Mr. Fritsch to have obeyed Mr. Warner and conducted the experiment in secret without your knowledge?

Mr. Bradford: Objected to for the reasons before given, and as immaterial and irrelevant.

A. There would have been no reason for Mr. Warner to have done this if his object was to market the article, and I feel positive that he never so instructed Mr. Fritsch, because everything was done over and above board. The special fomulas regarding the preparations of the house were in my own keeping, and if Mr. Warner had wanted this preparation made in secret he would have referred it to me, as he had done with other preparations that we manufactured.

XQ18. But suppose Mr. Warner had wanted Fritsch to experiment on a preparation, and did not want you to know about it, and had directed Fritsch to do the work in secret, and without your knowledge, would it have been possible for Fritsch to have obeyed Mr. Warner and conducted his experiment without letting you know?

MR. BRADFORD: Objection repeated, and further because the question is wholly without any basis in the evidence in the case either of plaintiff or defendant.

A. Of course there is nothing that is not possible, if you want to put it down that way, but the personal confidence that Mr. Warner had in me would not have permitted him to do an underhand trick, as I would call that, because he knew that I was not a man to stand for a thing like that. Furthermore it would have been impossible, as I said in my previous testimony, for Mr. Fritsch to do any experimenting without my knowledge, as I was in that department at least once every hour throughout the day.

XQ19. Was Ramsey over your head as an official of the company?

A. He was not. William R. Warner was the only one over me.

XQ20. If Fritsch, for his own purposes, and without any orders from you or Warner, had chosen to conduct a little experiment on side lines to please himself,

and keep it quiet from you, could he have done it without your knowing it?

MR. BRADFORD: Objection repeated.

A. He might have done that, or had it at home, as far as I know; that is, he might have done it while I was at lunch.

XQ21. About how many items were there in the Warner line in the early part of 1908 before the Pfeiffers took it over? Give an approximation.

A. I should judge five hundred in that department.

XQ22. My question is how many was there in the entire Warner line under the old firm?

A. The entire line would cover the pill department, and the general supply department, which includes almost everything with us in the pharmaceutical line, druggists' supplies, for we run a full line of them. You might as well say the entire dispensary.

XQ23. I will ask you again how many items of drug or chemical preparations were there in the entire Warner line under the old firm?

MR. BRADFORD: Objected to as irrelevant and immaterial.

XQ24. I mean either in the liquid department, pill department, or any other department, in all departments.

A. That is impossible to answer.

XQ25. Were there five thousand?

MR. BRADFORD: Same objection.

A. My answer would be guesswork at that; I could not say.

XQ26. Were there two thousand items?

MR. BRADFORD: Same objections, and further, as needlessly encumbering the record, to borrow defendant's counsel's phrase, and as wholly unjustified and improper, and further because the Warner Catalogue itself is the only best evidence.

XQ27. Whether two thousand or more?

MR. BRADFORD: Same objections.

A. There may have been two thousand, but to be safe I will say I know there was five hundred.

XQ28. Were not there more than five hundred?

MR. BRADFORD: Objections repeated.

A. My previous answer covers the question of defendant's lawyer.

XQ29. I don't want you to be "safe", but to tell the truth, and give the best approximation of the number you can. I now ask you if you are willing to swear there were not over two thousand items such as I have mentioned in the old Warner line?

MR. BRADFORD: Objections repeated. Counsel has no right to propound such questions in such a manner to the witness. It is wholly improper for many obvious reasons.

A. As I understand, this examination relates to one preparation, not a question of how many preparations were made in the Warner laboratory. I could not swear positively as to the actual number of preparations made, and therefore cannot give the answer asked for.

XQ30. I am not asking you to state the exact number of such preparations in the Warner line, but to state whether, in your belief, there were over two thousand items in that line?

MR. BRADFORD: Objection repeated.

A. I think you have asked me to swear if there were two thousand preparations in that laboratory, or over. As I am not positive of the exact number, I will not swear to the exact amount.

XQ31. You will notice I have not asked you to state the exact number, but to state whether your recollec-

tion is that there were or were not over two thousand items.

MR. BRADFORD: Objections repeated, and further objection made that witness has answered fully and frankly, as must be evident to counsel for defendant, and to the Court, giving his best answers to the questions asked.

A. If you insist on an answer to this question, I will have to take time off, and count them, as I have the entire list with me.

XQ32. You mean you have the entire list in your hand at the present moment?

MR. BRADFORD: Objections repeated.

A. I have.

XQ33. With that entire list in your hand at the present moment, and without literally counting every item, will you swear there were not over one thousand items in that list?

MR. BRADFORD: Objections repeated, and the further statement made that counsel for defendant may take this catalogue and count the items for himself, or that it may be introduced in evidence, and counsel may ask the Court to count the items, if he considers the fact sought to be shown important. There is no disposition on the part of witness or counsel for plaintiff to deprive counsel for defendant of this bit of information, and all facilities possible will be extended to him to ascertain the facts. We offer him the best evidence on this point in the catalogue itself.

MR. RAWLE: I strenuously object, as I have often before done in this case, to the interference by plaintiff's counsel in the cross-examination of his witnesses.

MR. BRADFORD: Plaintiff's counsel insists on his right to protect the witness against such glaring

and willful violation of the rules of evidence on cross-examination.

A. I again refuse to swear to the number of articles or preparations made by William R. Warner & Company, and submit their epitome in evidence.

XQ34. You have handed me the Warner list, and I observe that it contains over two hundred pages. As I glance over it rapidly it seems to me they average about twenty to the page. Is that about correct?

MR. BRADFORD: Same objection. The catalogue speaks for itself.

A. Some pages may average about two hundred. The witness asks for chance to make correction or verify his statement. If you will kindly hand me that epitome I will make the correction at once.

XQ35. In answering my last question, did you not say that some pages might average two hundred?

MR. BRADFORD: Objection repeated.

A. I have asked for the privilege of correcting or making my statement good.

XQ36. In answering my last question as to whether the pages did not average about twenty items, you replied that some of the pages might average two hundred, and the stenographer has so taken it down. Is not that what you said in answer to my question?

MR. BRADFORD: Objection is repeated.

A. If the defendant's lawyer will permit me to look at the Warner epitome I will show him why I made the statement above that there might be two hundred.

MR. BRADFORD: It is noted that counsel for defendant has taken possession of the epitome referred to, and has refused to hand it to the witness, notwithstanding the witness' request in answering the last two questions.

MR. RAWLE: I object to such statements go-

ing on the record, and I am sorry to have to say the statement is not true.

MR. BRADFORD: It is true, as every person in the room knows, including Mr. Rawle himself. The witness asked for the epitome in response to his last question, held out his hand to get it, and counsel for defendant retained it, and refused by his action at least to allow witness to have it. Since counsel for plaintiff has made this note upon the record counsel for defendant has thrown the epitome upon the table, where it can be reached by counsel for plaintiff, and handed to witness, which is now done. These are the true facts, notwithstanding any statement that counsel for defendant may make, and this statement can be verified by Mr. G. A. Pfeiffer, who is at the right elbow of his counsel, by Mr. Charles J. Lynn, General Manager of the Lilly corporation, and by the stenographer who is taking the deposition, and by Mr. John E. McCambridge, Jr., who is also in the room.

MR. RAWLE: Defendant's counsel feels compelled to state that he retained the book in his hand for the further purposes of cross-examination, as his right was, and was not aware the witness had in any way indicated his desire to have it, except insofar as his answer to questions so indicated.

XQ37. At the time inquired of, were not a very large number of the items in the Warner line being marketed in competition with similar medicinal articles or preparations put on the market by other drug houses?

MR. BRADFORD: Objected to as immaterial and irrelevant, and not cross-examination.

A. All pharmaceutical houses have what is known as a general line, manufactured by the various firms. In addition to that they have what is known as their special formulas, which are marketed specially to the

trade. While the general line is open to all, the special manufactured article in a way belongs to the party marketing the same.

XQ38. (XQ37 repeated to the witness.)

MR. BRADFORD: Objection repeated.

A. In the general line, yes.

XQ39. I understood you to say that you had been in the employ of the original William R. Warner & Company concern, father and son, for thirty-one years, is that correct?

A. That is correct.

XQ40. And about three weeks after the Messrs. Pfeiffer took over the Warners' business your services were dispensed with, is that correct?

A. My services with the William R. Warner & Company after the Pfeiffer Chemical Company took hold of it was until about the last week in August, as I remember it, 1908. I think I took my last vacation day when Mr. Pfeiffer wanted me to come and see him in the office.

XQ41. I read from your previous testimony given in this case the following:

"Q4. How long after the Pfeiffer Chemical Company took over the Wm. R. Warner & Co. was it before you severed your connection with them?

"A. About three weeks."

Was that statement correct?

MR. BRADFORD: Question is objected to as not cross-examination, and further because the time when the Pfeiffer Chemical Company took over the William R. Warner & Company has been stated at various different dates in the record, and is comparatively not a well settled date.

MR. RAWLE: Objection is made to the statement of plaintiff's counsel that the Pfeiffer Chemical Company took over the William R. Warner &

Company, the old firm. Such is not the fact, as appears on this record. Defendant's counsel states on the record in order to let the fact appear correctly for benefit of plaintiff's counsel that William R. Warner & Company was organized as a corporation and legally took over the old William R. Warner & Company business in his office on the 28th of July, 1908.

MR. BRADFORD: It has also been stated in the record by counsel for defendant on various occasions that the William R. Warner & Company was taken over by the Pfeiffer Chemical Company, or language in substance this. It has also been made to appear in the record by some witnesses that Mr. G. A. Pfeiffer was in Philadelphia in charge of the laboratories as early as June, 1908. Whether the business was "taken over" when the new corporation was organized, or prior to that date, I don't know, and apparently no one else knows definitely so far as this record shows. It seems clear, however, that Mr. Pfeiffer was in charge for some time prior to July 28, 1908.

MR. RAWLE: Notwithstanding the last remarks of plaintiff's counsel, the fact remains that the defendant company was organized July 28, 1908, and then for the first time became the owner of the business, and became a corporation under the laws of Pennsylvania. Mr. Pfeiffer's presence in Philadelphia since after some late day in June, and until July 28th is a fact. He was there to acquaint himself with the business, and be ready to assume it when the sale was closed. The contract was made in June.

XQ42. (XQ41 read to the witness.)

A. I thought I had made this time of my leaving the William R. Warner & Company definite, being the last week in August, 1908. If the firm did not change

hands until the 28th of July, then my statement of about three weeks is very near correct. However, it was the last week in August, 1908, that my services ceased with the William R. Warner & Company.

Cross-examination Closed.

Deposition Closed.

JOHN E. MCCAMBRIDGE.

STIPULATION.

It is agreed between counsel that inasmuch as the witnesses John E. McCambridge, Jr., and John E. McCambridge, Sr., are from out of the city, and desire to leave on a train before the depositions are transcribed, that the said depositions may be transcribed, and then sent to them by the notary for their signatures.

Adjourned to meet subject to notice or agreement.

JOHN E. MCCAMBRIDGE, JR., having been first duly sworn, in answer to interrogatories by Mr. Bradford, testified as follows:

Direct-examination.

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation.

A. John E. McCambridge, Jr.; 32 in January; residence, DesMoines, Iowa; occupation, superintendent of the laboratories of the Waterbury Chemical Company of DesMoines, and by profession an analytical chemist.

Q2. Were you formerly employed by the house of William R. Warner & Company of Philadelphia, and if so, when?

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A. Yes, sir; I was employed there by them from June 17, 1901, until the middle of August, 1908.

Q3. What were your duties while in the employ of William R. Warner & Company?

A. From June 17, 1901, until June 4, 1904, I was a helper in the laboratories, and from then on I had charge of the analytical department.

Q4. Do you know a gentleman by the name of Harry Fritsch?

A. Yes, sir.

Q5. Who is he?

A. He was an employe of the William R. Warner & Company, and he worked in the pharmaceutical department, or liquid department, under the direction of the superintendent, Mr. J. E. McCambridge, my father.

Q6. Mr. Fritsch, testifying as a witness for defendant in this case, has stated that he made certain experiments in the laboratories of William R. Warner & Company in an endeavor to make a duplicate of Coco-Quinine, Lilly, and that these experiments by him were in the early part of 1908 or in 1907. Do you know anything about such experiments by Mr. Fritsch during this period?

A. I have no recollection of same.

Q7. Were you in position where such experiments would have been likely to have been called to your attention, or come under your notice had they been conducted as stated by Mr. Fritsch?

A. I very likely would have seen same.

Q8. Would the experiments have been likely to have been called to your attention as the analytical chemist, if such experiments had been carried on in the laboratory at that time?

MR. RAWLE: Objected to as leading.

A. I probably would have seen same.

Q9. It has been suggested by other witnesses for defendant that the laboratory was a large place, and it would have been an easy matter for Mr. Fritsch to have

carried on these experiments without the knowledge of your father, or others who have testified. What have you to say as to this?

MR. RAWLE: Objected to as leading, and the question has already been put to the witness.

A. The laboratory, particularly the pharmaceutical department, employed about four people. The pharmaceutical department was a very small department in size, and the work was so concentrated that we practically knew what was going on amongst us at all times, and experiments made from time to time were always compared, and we always conferred with each other on the products.

Q10. Do you remember the names of those who were employed in the pharmaceutical department in the spring of 1908? If you do, please state who they were?

A. Mr. Fritsch and Mr. Groves, and there was a bottle boy, and another assistant, I couldn't say his name. I cannot remember his name.

Direct-examination Closed.

Cross-examination.

By MR. RAWLE (not waiving objections):

XQ11. When you speak of having been employed by William R. Warner & Company, I take it you mean the old firm which existed before the Pfeiffers came to Philadelphia?

A. Yes, until the Pfeiffers came to Philadelphia, and then a short time after they were there.

XQ12. Then you understood in July a corporation was formed, and you went into their employ?

A. Yes, from then on to the middle of August.

XQ13. So you worked for two or three weeks under the corporation?

A. Yes, sir.

XQ14. You were then a young man about twenty-two or twenty-three?

A. About that age.

XQ15. Was your father all over the building?

A. His duties were over the building at all times.

XQ16. The floor space or loft in which your department carried on its work covered the entire floor of the building? There were no partitions,—the whole floor of the building was one open space?

A. No, sir. The manufacturing department on the sixth floor was a space about forty by forty-eight. That was one space with no partitions except a stairway through the center leading to the seventh floor.

XQ17. It occupied the Broad Street front of about forty feet, and reached back to the alley, and also reached over to Wallace Street. Is that correct?

A. No, sir. It was probably about forty feet on Wallace Street, and about forty-eight on Watt Street. That is practically the proper dimensions.

XQ18. Were you under Fritsch or over him?

A. I was not under him or was not over him. I was entirely independent of Mr. Fritsch, but Mr. Fritsch submitted the preparations to me for examination.

XQ19. I think you said a moment ago that part of the laboratory was on the seventh floor also?

A. That was a department for the manufacture of fluid extracts, and about two specialties.

XQ20. There was a laboratory on the seventh floor, was there not?

A. That was simply strictly a manufacturing department for the manufacture of fluid extracts, as I have mentioned.

XQ21. How far is DesMoines from Chicago?

A. About three hundred and fifty miles.

XQ22. You left home last night?

A. No, sir; I left DesMoines on Monday night.

XQ23. You are returning to Chicago tonight?

A. Yes.

XQ24. Who first talked with you about this case, and suggested that you testify as a witness?

A. I received a communication from my father stating that I would probably be called to Indianapolis to testify in this case.

XQ25. Have you talked to any Lilly man about the case before you came here today?

A. I never saw a Lilly man before I met Mr. Lynn this morning, and then I did not know he was a Lilly man, and had not seen him until just this moment.

XQ26. In the days of the old firm at the Warner plant, would you say the discipline was very perfect, or perhaps a little at loose ends, considering the whole business?

MR. BRADFORD: Objected to as immaterial and irrelevant.

A. Each department was under a separate head, for which he was responsible to a superior.

XQ27. Who was the head of it all?

A. During my employment Mr. J. E. McCambridge was superintendent of the William R. Warner laboratories.

XQ28. Who was the head of the whole business?

A. Mr. William R. Warner, Jr.

XQ29. I will ask you whether the organization was carried on with severe discipline, or whether it was a little give and take, with some friction between different departments?

MR. BRADFORD: Objected to as immaterial and irrelevant.

A. The work seemed to go very smoothly to my knowledge in every particular.

XQ30. You mean so far as you know?

A. To my knowledge.

XQ31. Is that what you mean by the words "to your knowledge"?

A. As far as I know, sir.

Cross-examination Closed.

Re-direct-examination.

By Mr. Bradford:

RDQ32. As I understand it, William R. Warner, Jr., was the head of the firm, your father was superintendent of the laboratories, and there was a general manager by the name of Mr. Ramsey. Is that correct?

A. I have never understood Mr. Ramsey's position other than general manager. My father was superintendent of the manufacturing departments, and his duties were all over the plant. In the drug manufacturing business the term "laboratories" means practically the entire plant. In speaking of the Warner plant you would ordinarily speak of it as the Warner "Laboratories".

Re-direct-examination Closed.

Deposition Closed.

J. E. McCambridge, Jr.

Charles J. Lynn, being called as a witness on behalf of plaintiff, in answer to interrogatories by Mr. Bradford, testified as follows:

By Mr. Bradford:

Q1. State your name, age, residence and occupation.

A. Charles J. Lynn, Indianapolis, Indiana; forty-three; secretary and general manager of the Eli Lilly & Company, plaintiff in this suit.

Q2. Do you recall any interviews with Mr. G. A. Pfeiffer, Mr. Henry Pfeiffer, or both, respecting the manufacture and sale by them of Quin-Coco, and if you do, will you please relate when these interviews occurred, with whom, and what was said?

A. I had an interview in Atlantic City with Mr. G. A. Pfeiffer during or following a meeting of the Homilia Club there, and a few months later had an-

other interview in Philadelphia at which Mr. G. A. Pfeiffer and Mr. Henry Pfeiffer were present; the second interview was during luncheon at, I think, what they call the Manufacturers' Club, on Broad Street. The substance of what was said was practically the same at both interviews. It was to the effect that they could not give up the manufacture of Quin-Coco because it had been one of the valuable assets of the Searle & Hereth Company for which they had paid a large sum of money. That, in substance, was the statement made to me in response on both occasions to my request that they discontinue the product.

MR. RAWLE: The question and answer are objected to as not rebuttal, and the answer as not stating what was said, only in a vague, general way.

Q3. What were the reasons which led you to have these interviews with the gentlemen referred to, and to make these protests against their manufacture and sale of Quin-Coco?

MR. RAWLE: Objected to, because the motives for the interviews are not relevant.

A. The great activity of the Warner-Pfeiffer salesmen in attempting to exploit their product, Quin-Coco, as a substitute for our product, Coco-Quinine, and a desire to eliminate this unfair competition was the reason for my having these interviews with them in which I requested they discontinue their product.

MR. RAWLE: The answer is objected to as obviously improper.

Q4. During the examination of Mr. G. A. Pfeiffer as a witness for plaintiff in this case, he called attention to a number of chocolate quinine mixtures put out by other houses, enumerating them in his answer to Q112 on page 27, D. R. Will you please refer to this answer and state which of these preparations was first

called to your attention, and comparatively which has been most frequently called to your attention as an item sold against your item Coco-Quinine?

MR. RAWLE: Objected to as irrelevant.

A. There were some of these products that I never heard of until they were introduced by Mr. Pfeiffer. There were none of them that were heavily substituted or offered as substitutes for our Coco-Quinine other than, possibly, Quinico, put out by Meyer Bros. Drug Company, St. Louis, and that only in a comparatively limited territory. It would be practically impossible for me to state which one of these products I first heard of.

Q5. Did you hear of any of them before you heard of the Pfeiffer preparation called Quin-Coco?

A. Yes, I think I did, that of the Meyer Bros. Drug Company, namely Quinico, but on taking the matter up with the Meyer Bros. Drug Company and requesting them to discontinue their product, they did so, and it was off the market for some time. Other than that one product I think there were none that I heard of prior to the time that I first heard of Quin-Coco.

Q6. Is Quinico now marketed by Meyer Bros. Drug Company, and if not, please explain why?

MR. RAWLE: Objected to as irrelevant.

A. Quinico is not now marketed by Meyer Bros. Drug Company. As stated in answer to a previous question they discontinued the product some years ago and then later reinstated it. Since instituting this suit opportunity was again had to discuss the matter with Mr. C. G. F. Meyer, president of Meyer Bros. Drug Company. Our position and feelings were stated and he said that at his first opportunity he would look into the matter. This conversation was here in Indianapolis this fall during the meeting of the National Association of Retail Druggists, and on his return to St.

Louis, and after apparently looking into the matter, he wrote us that the preparation would be at once discontinued.

Q7. Thus acknowledging your proprietary rights?

MR. RAWLE: Objected to as irrelevant and inadmissible.

A. Presumably so.

Q8. Please state why, at the time this suit was brought, it was brought against the William R. Warner Company instead of some of these other concerns referred to in that answer by Mr. Pfeiffer.

MR. RAWLE: Same objections.

A. Because William R. Warner & Company had the only product on the market which successfully duplicated Coco-Quinine, the duplication being so nearly perfect that it was thought by us that they must in some way have obtained possession of our working formula, and because they were perniciously active, if I may use that term, in exploiting their product as a substitute for our product. We created the demand for Coco-Quinine by a great deal of expensive detail work, backed up by extensive advertising in medical and pharmaceutical journals, and it was irritating in the extreme to have our salesmen, one after another, and repeatedly, write us and say to us that the Warner Company, through their product, Quin-Coco, offered by their salesmen as a substitute for our product, Coco-Quinine, were reaping the demand created at our expense and effort. The makers of the other items or products named by Mr. Pfeiffer were not active in all sections of the country as were the Warner-Pfeiffer people, and indeed some of them were active in no sections, merely taking what business might come their way without special effort to get it, and, as before stated, some of these products I never heard of until they were introduced by Mr. Pfeiffer.

MR. RAWLE: The answer is further objected

to as irrelevant, as hearsay, as inadmissible, and as entirely improper evidence.

Q9. During the taking of Mr. Pfeiffer's deposition a list of preparations was introduced and marked "Defendant's Exhibit, G. A. Pfeiffer's List of Lilly Products," and which Mr. Pfeiffer testified was similar to the products of other manufacturers and marketed by Eli Lilly & Company subsequent to the introduction of those products, the evident purpose being to endeavor to persuade the Court that in the manufacture and sale of these Lilly preparations, Eli Lilly & Company is practicing the same methods complained of by it in this suit against William R. Warner & Company. I will ask you to refer to this list of products printed on page 560, Defendant's Record, and state your view respecting this question, in so far as these items have any bearing upon it.

MR. RAWLE: The question is objected to as irrelevant and immaterial and improper in every respect.

A. I would like to say that in the main these appear to be what may be termed competitive items. Some of these items in the column headed "Original" are entirely new to me. I never heard of them. The first item, Albolene, in which McKesson & Robbins are given as the manufacturer, is not, in the ordinary sense, a manufactured item at all. It is merely a colorless mineral oil, originally a Russian oil, I believe, but at times, at least, since the beginning of the European war, an American oil has been used. They have simply taken the oil as it comes from the refiner and bottled it under the name "Albolene," which I presume is a trade-marked title, and the title is the only thing about that product to which they could possibly claim any originality or exclusive rights. Petronol, Lilly, which is given as a similar product, is also simply a colorless mineral oil. We have always used the Rus-

sian oil, and when Russian oil was no longer obtainable the product was temporarily withdrawn from the market. We only claim rights in that product to our original title.

I note further down the list an Elixir Femella, Searle & Hereth, manufacturers. I have never seen or heard of this product until seeing it in this record. A product Femagen, Lilly, indicated as a similar item, is, as I recall, an original specialty of Eli Lilly & Company, gotten up by our Mr. James E. Lilly and given that coined title.

I have always felt that Lactopeptine was justly the property of the New York Pharmacal Association, and that they should have protected their rights in the product against all manufacturers. They did not, and it is now a product, not only common to perhaps hundreds of manufacturers, big and little, in this country, but has also found its way into the National Formulary, one of the books of standards made official by the Food and Drugs Act of 1906. The reason why I say I have always thought that the New York Pharmacal Association should have protected their rights to the product is that in its manufacture they colored it red to give it a distinctive appearance, and every manufacturer who afterwards made a similar product to meet the demand brought to him in one way or another, also colored their product red.

I note in this list several items made by one or another of the Warner associated houses which, since the beginning of this suit, we have taken out of our list following a conversation with Mr. G. A. Pfeiffer in which he stated that in those items he felt we were trespassing on his rights. This was the first suggestion from Mr. Pfeiffer that he felt we should withdraw these items or modify them that had come to my attention, and in withdrawing these items or modifying them to meet his views we only followed what has been our invariable custom whenever we have been advised

by other manufacturers that we have unwittingly trespassed in any way. The matter with Mr. Pfeiffer was handled by correspondence after he left Indianapolis.

At this point the taking of this deposition was continued until tomorrow morning, November 29, 1916.

November 29, 1916, 9 o'clock A. M.

The parties met pursuant to adjournment and the taking of the deposition of Charles J. Lynn was resumed as follows:

(Q9 was read to the parties by the stenographer, and the answer thereto.)

MR. RAWLE: The answer is further objected to as containing irresponsive matters, and containing matter which is irrelevant and inadmissible.

By MR. BRADFORD (resuming):

Q10. Referring again to Q9, being the last question asked you on yesterday, please state whether or not the methods of Eli Lilly & Company in marketing the preparations in this list correspond to the methods complained of by plaintiff in this case, and if not, why not?

MR. RAWLE: Objected to as calling for inferences, and not calling for facts, and as being inadmissible and irrelevant, and not proper for rebuttal, and further because the evidence which was produced by defendant was produced to establish the fact that all drug houses make a practice of imitating to a greater or less degree the products of other houses unless protected by law, and, incidentally, that this is the practice of the plaintiff.

A. They do not. The preparations named in this list under the head of "Original" are almost entirely those of what might be termed a general pharmaceutical character; I mean by that they they are mostly simple or ordinary pharmaceutical mixtures possessing no originality, many of which were known to the trade as ordinary pharmaceutical products prior to the time they were offered by these manufacturers under an original title. Often manufacturers will take an ordinary pharmaceutical combination and give it a coined title. This is done so that they may secure for themselves the results of any efforts they may put forth to promote the sale of that particular item. Perhaps the one exception is that of Lactopeptine, which I have already covered in my former answer. It is not the practice of Eli Lilly & Company to imitate or duplicate the specialties of other manufacturers, as has been stated. When we have unwittingly done so we have never hesitated to accede to requests to either discontinue or modify the product. We abhor this practice which, in the early days of my connection with the pharmaceutical business, was a somewhat common practice, and is today on the part of a certain class of pharmaceutical houses, and we object to its practice upon us just as much as we do the idea of practicing it upon others. In the present case—that is, referring to our differences with the William R. Warner & Company, when their activities in behalf of their imitation product, Quin-Coco, became noticeable, we immediately objected. At that time, and for some time afterwards, we had no knowledge of the fact that we had any redress at law, and so confined our efforts to secure relief to persuasion by letter and personal interview. Not until we were advised by counsel did we have any idea that we might have taken such a step as finally taken to secure the relief through the process of law, to which we felt we were justly entitled.

Q11. During the examination of witness, F. E.

Bibbens, on Monday certain samples of experiments made by him were introduced in evidence, and marked "Exhibits 1 to 10, inclusive." By whose direction were these experiments made and for what purpose?

MR. RAWLE: Objected to as irrelevant, both as to direction and purpose, and as not rebuttal.

A. They were made under my direction, and for the purpose of showing that other satisfactory and accessible articles of commerce could be used to hold the crystalline particles of quinine sulphate in suspension than chocolate. That was the primary object of these experiments and after the samples were made up some eight months ago they were bottled and sealed with a transparent parchment wrapper and examined only occasionally, as could readily be done through the parchment wrapper, to see if the quinine remained in suspension. It is no easy matter to develop an original pharmaceutical specialty. It frequently takes repeated experiments and often even after products of the kind are put on the market it is still necessary to further experiment in order to make them commercially successful. This was the case with Coco-Quinine itself. The samples submitted by Mr. Bibbens in so far as they were examined by us after their manufacture clearly show that in our experiments as far as made we were successful through other agents than chocolate in holding the quinine sulphate in suspension. Some of these products or samples may be, and undoubtedly are, ready now for successful exploitation as a pharmaceutical specialty. Others may possibly be found that require still further experimentation in order to properly balance all of the ingredients, and to perfect other features of the product beyond that of the suspension of the quinine sulphate.

Q12. I call your attention to a list of competitive preparations which was introduced in evidence on behalf of defendants, and at the suggestion of defendant's counsel, and ask you if you know what it is and to explain in reference thereto?

A. I have no way of identifying this particular exhibit, but it is similar at least to a list which unknown to me, and without my authority, was prepared and sent out to our salesmen perhaps a year or so after I became General Manager of the business, January 1, 1907. It had been in existence for possibly some months before I learned of it but when it was brought to my attention I immediately instructed that it be discontinued, and copies in the possession of our salesmen withdrawn, and to the best of my knowledge this was done. We do not now have such a list, nor has such a list to my knowledge been in the possession of our salesmen since I instructed that the list referred to be discontinued and withdrawn. In asking the young man who had put the list out why he did it, he said it was to save correspondence, having frequently had inquiries from travelers for the name of our item that would compete with some other item in the same field, made by some other house. He at first would send this list to a salesman in reply to such an inquiry, but shortly concluded to send a copy to each salesman, and when I reminded him that such a list was an absolute violation of the policy of Eli Lilly & Company because of the use to which an unscrupulous salesman would no doubt put such a list he replied that he felt that the statement with which he had headed the list made our position perfectly clear, and that with that statement the list would not be objectionable to the management. I could not agree with him and insisted that the list be immediately withdrawn. I recall he also further stated, and called attention to the fact that no comparison of prices was made, all of which knowledge he claimed was necessary for any salesman to have if he wished to push one product as a substitute for another, as in all such cases it was simply a question of price. I think this must have occurred during the latter part of my second year as general manager, near the close of 1908. It is of course possible that some of these lists were

not returned by the salesmen, and if the list in evidence is one of the lists sent out by us it probably is such a list.

Q13. As I understand it, then, this list was probably issued by the young man in question about a year after you became general manager, which would make it about the first of 1908, and by your orders was discontinued and withdrawn during the latter part of 1908. Is that correct?

A. That is correct.

Q14. You spoke of the fact that certain items previously listed in your price list were withdrawn following a suggestion or discussion of the subject with Mr. G. A. Pfeiffer. When and where did this discussion occur?

A. It occurred in the office of Bradford & Doolittle, then in the Lemcke Annex Building, this city, at the time we first began taking depositions in this case, on the first day.

Q15. You stated it was continued by correspondence. Have you the correspondence, or a copy thereof?

A. I have.

Mr. Bradford: Counsel for plaintiff asks counsel for defendant to produce the original letter dated May 3, 1915, from the Eli Lilly & Company, signed by Charles J. Lynn, Secretary and General Manager.

Mr. Rawle: The letter is produced.

Mr. Bradford: The letter is produced, and the examiner is asked to copy it into the record. It reads as follows:

"Indianapolis, U. S. A.
May 3, 1915.

Mr. G. A. Pfeiffer,
c/o Wm. R. Warner & Company,
Philadelphia, Pa.

Dear Mr. Pfeiffer:

I have just received from our manufacturing

department the following report of sales on the products named by you during our recent conference in this city:

	1914	To date
"Elixer Salicylic Acid Comp	5,902#	2,026#
Liquor Tritici	2,347#	360#
Guaiacol Comp.	2,836#	750#
Calomel and Bismuth Powder	26#	0
Tab. Bismuth and Calomel	14,100	7,000

"Instructions have been issued to advance our list prices on Elixir Salicylic Acid Compound to the basis of $7.50 list per gallon. At forty off to the trade this would net $4.50 which, as we understand the matter, will place our product in a position to compete with yours solely on its merits, eliminating the advantage of a better price. We do not understand that there is any other basis for your claim that we are taking any advantage, or overstepping the lines of what is entirely fair, in regard to this product.

"As to the other four items, we do not intend that any of them shall be sold as 'replacers' for the original products of your house. However, since you feel that such sale is, or may be, possible, we will discontinue, agreeable to your request, the manufacture of Liquor Tritici, Guaiacol Compound, Calomel and Bismuth Powder and Tablets Bismuth and Calomel. These four items will disappear from our next price list to be issued July 1st.

"In this connection we call this fact to your attention: We frequently have letters from physicians, quite a number of whom, for reasons good or otherwise, prefer our products, asking if we cannot supply a product of the therapeutic or medicinal value of some other product on the market. In cases where others apparently have no proprietary rights and where the situation seems

to justify it, we manufacture a product to meet the demand and offer it under a name of our own and on its own merits. We have no desire to infringe upon your rights, or the rights of others, and since you have suggested the opinion that we are poaching on your preserves in these matters, we are glad that you called the matter to our attention and are pleased to discontinue their manufacture.

"Trusting that this will show you that we have no desire to prey upon the product property rights of our friends, we remain,

Very truly yours,

ELI LILLY AND COMPANY,

CHAS. J. LYNN,

CJL—T *Sec'y and General Manager.*"

MR. BRADFORD: I also offer in evidence the original letter from Wm. R. Warner & Co., by G. A. Pfeiffer, Treas., dated May 7th, 1915, and the original letter from G. A. Pfeiffer, Treas. Wm. R. Warner & Co., dated June 3d, 1915, and ask the examiner to copy them into the record. They are as follows:

"Philadelphia, May 7th, 1915.

Messrs. Eli Lilly & Co.,
Indianapolis, Ind.
Gentlemen:

Attention Mr. Charles J. Lynn.

This will acknowledge your letter of the 3rd. After further considering same, should we have anything more to add, will write you.

Truly yours,

WM. R. WARNER & CO.,

G. A. PFEIFFER, *Treas.*"

"Philadelphia, June 3rd, 1915.

Messrs. Eli Lilly & Co.,
Indianapolis,
Indiana.

Attention of Mr. Chas. J. Lynn.

Dear Mr. Lynn:

Supplementing our letter of May 7th in reply to your letter of May 3rd, at our interview in Indianapolis when we were making an effort to adjust the pending suit, I said that certain Lilly products were similar to certain specialties in the Warner and S & H line, and had been marketed by your house after the Warner and S & H products were on the market.

Mr. Lilly then said in substance that he would be willing to discontinue such products, and the names of several of them were then mentioned, but neither Wm. R. Warner and Company, nor the Searle & Hereth Company have ever objected to those Lilly products, and have always claimed for themselves the same right as you exercised in those instances.

We would not therefore wish to be placed in the position of having 'suggested' or requested your withdrawal of the Lilly items to which your letter refers.

Truly yours,

G. A. Pfeiffer,
Treas. Wm. R. Warner & Co."

Mr. Bradford: I ask counsel for defendant if he will produce the original of a letter written by Eli Lilly & Company to William R. Warner & Company, dated July 1, 1915.

Mr. Rawle: I have it here.

Mr. Bradford: The letter is produced, and the examiner is asked to copy it into the record. It is as follows:

"Indianapolis, U. S. A.
July 1, 1915.

Wm. R. Warner & Company,
Philadelphia, Pa.

"Atten. Mr. G. A. Pfeiffer."

Gentlemen:

Your letter of June 3d in response to ours of May 3d was duly received.

A reply seems unnecessary, except that it may not be out of place to observe that your position, as expressed in this letter, differs from our understanding of your views as expressed orally at Indianapolis.

Very truly yours,
ELI LILLY AND COMPANY,
CHAS. J. LYNN,
CJL-T *Secretary and General Manager.*"

MR. BRADFORD: I also ask counsel for defendant if he will produce the original of a letter from Eli Lilly & Company to Mr. G. A. Pfeiffer, care Wm. R. Warner & Co., dated June 13, 1916.

MR. RAWLE: Mr. Pfeiffer does not find the original of this letter in the papers brought to Indianapolis. The copy may be substituted.

MR. BRADFORD: Pursuant to the consent of counsel for the defendant, a carbon copy of the letter referred to is here produced, and offered in evidence, and the examiner asked to copy it into the record. It is as follows:

"June 13, 1916.

Mr. G. A. Pfeiffer,
c/o Wm. R. Warner & Co.,
Philadelphia, Pa.

Dear Sir:

You are aware that we have discontinued the use of the word 'Hinkle' on our pill and tablet labels as well as in our price list, owing to the

representations you made to us, as you recall, during one of our conferences in Mr. Bradford's office, all of which is in line with our constant endeavor to be fair to our competitors. Our travelers are complaining that we are the only manufacturer not using the name 'Hinkle', but this is neither here nor there.

The occasion for this letter was to send you a piece of literature which has just come into our hands, advertising certain products of the Hinkle Pill & Tablet Company, Chicago. You may not be aware of the fact that there is such a concern and we are simply calling your attention to it as a kindly act. We do not know if there is a Hinkle connected with the institution and no doubt you will want to find out.

Very truly yours,"

CJL-T

Q16. Referring to the letters just offered in evidence, are they, or are they not, in line with the policy practiced by plaintiff in such cases?

MR. RAWLE: Objected to as irrelevant and immaterial, and as not effecting the issue here, and as not proper for rebuttal, and because the question is too general. If the facts are to be developed they must be brought out as facts.

A. They are strictly in line, although during my years as general manager of the business I can recall only two other similar situations. Some years ago Mr. Stauffen, the general director of Sharpe & Dohme, manufacturing chemists, Baltimore, general offices in New York, where Mr. Stauffen is located, and from where he wrote us, complained that our Pil A. S. B. & I. was too close a duplicate of their Pil Lapactic in which they claimed proprietary rights, and asked us to modify or change our pill in some way so that it could not be substituted on calls for their pill. While

at that time our pill was larger than that of Sharpe & Dohme, I immediately instructed that it be made still larger so that one could be easily distinguished from the other, so that a person used to buying and calling for Pil Lapactic, being familiar with its general appearance could not be deceived by having the Lilly pill supplied on his order for that of Sharpe & Dohme.

The other instance also occurred some years ago, and was a request from Parke Davis & Company, through their general manager, Mr. Swift, I think it was, that we discontinue entirely the manufacture of a product which we sold under the name of Solution Sanguestine Choloride, and which was a similar product to the Parke Davis & Company product known as "Adrenalin." Adrenalin is a patented product. Parke Davis & Company claimed rights both as to process and product, and while our product was made after an entirely different process from that of Parke Davis & Company, they claimed that we were nevertheless violating their rights in marketing a product of that kind made by any process. The same product was being made by several other manufacturers, presumably under the same impression as ours, that we had a right to make the product if we did not use their process, but in response to request from Parke Davis & Company we at once discontinued the manufacture and sale of our product, Solution Sanguestine Chloride. They later brought suit against another manufacturer making a similar product, who defended their right to the product made by their own process, but I understand that after several years of litigation the rights of Parke Davis & Company to both process and product were sustained.

Those were the only two instances since I became general manager of the business that I can recall where we have ever been requested by any manufacturer to change or modify or discontinue any product of ours other than the suggestion which came from

Mr. Pfeiffer after the beginning of this suit. I would like to say also that we took the first opportunity possible to make the changes and discontinuance that Mr. Pfeiffer indicated he thought should be done. We issued under date of July 1, 1915, a special edition of our price list. Owing to the state of the market we did not get out a general edition, as usual, for the entire trade, but got out this special edition for the use of the jobbing trade, and my recollection is in this edition these changes and discontinuances were made. These items do not appear also in the most recent edition of our price list, which came out about July 1st of this year. I would like to say further with reference to not all but several of these items named by Mr. Pfeiffer, that the formulas for the products were given us by Mr. Frank S. Hereth, who was in our employ as pharmacist, this being the same Mr. Hereth who was one of the founders of the Searle & Hereth Company of Chicago. His coming to us was some time after he severed his connection with the Searle & Hereth Company. I think Mr. Pfeiffer was no doubt justified in his suggestion, and certainly it was our pleasure to do what he thought, and we admitted by our action it was the right thing to do, as has always been our attitude toward all competitors.

Q17. Did Mr. Hereth make any claims respecting these formulas as to whether or not they were his, and he had a right to use them?

A. I cannot say as to that, but he certainly originated them.

At this point a recess was taken until November 29th, 1916, 2 o'clock P. M.

when a man will be upon such a familiar footing with his customer as to have entree to the prescription room or department. Then, in those cases, no doubt the order is written up back there.

XQ25. Do you think it likely a considerable number of druggists, who are customers of yours, might have stocked Quin-Coco for, say a year, without your astute salesmen finding it out, or some of them?

A. Not a considerable number, no, but many might have, and even though one of our salesmen had noticed a bottle of Quin-Coco, or three or four bottles of Quin-Coco, he might not have been alarmed or seen any reason for reporting the matter to us.

XQ26. I understand the first time you made known to the defendant that you were dissatisfied with their making their Quin-Coco product was verbally at an Atlantic City meeting of the Homilia Club, which occurred in the summer of 1909?

A. I am not sure whether the summer of 1909 or fall of 1909, but along in there somewhere.

XQ27. Are you willing to state positively, as a fact, that Quin-Coco was on the market for over two years before your company knew it?

A. No. We may have known it, and not thought much about it. We may not have had any occasion to become alarmed about it at that time.

XQ28. I will ask you to be very much more specific. Please assume that it was put on the market late in 1906. Are you willing to state as a fact you had no knowledge of its being on the market during the fall of 1908?

A. I do not know that I had no knowledge of it during that time; I have no recollection of that special knowledge of it at that time.

XQ29. Do you mean then it was so simple a matter you paid no particular attention to it?

A. It may have been. It may have been and probably was at that time. If the product was put on in

1906, as you state, that about that time it was gathering force, and that we were beginning then to worry about it, later coming to the point where we took it up with the Messrs. Pfeiffer.

XQ30. You testify that in say, 1909, you had not been aware there was any legal remedy. Was Mr. Bradford your counsel at that time?

A. I am not sure about that. He may have been, although I think not. I think that at that time our patent work was done by Arthur W. Hood, of this city, either Bradford & Hood or Arthur W. Hood.

XQ31. And the same lawyers at that time did your trade-mark work, did they?

A. Such as we had.

XQ32. You did not deem it of sufficient importance to consult your counsel on the subject?

A. We did not know we had anything to consult counsel about or we should have done so.

XQ33. You did not consult counsel about any rights you might have had, did you?

A. No, sir; we did not; at least not to my knowledge. I did not do it. What any other official of the concern may have done I have no knowledge.

XQ34. In referring to Lactopeptine as a product marketed by the New York Pharmacal Company, you seemed to me to have in your mind the idea of some "protection" for that product. Will you tell me what kind of protection you had in your mind?

A. That protection which would naturally follow priority and originality. As I have always understood it, and understand it now, they did develop or originate that product, giving it a distinctive title and a distinctive color.

XQ35. Do you mean protection by a patent or by a trade-mark, or what?

A. I don't know whether they are protected by patent, trade-mark, or one or the other, but I simply recognized them as the original makers of that article.

XQ36. Laying aside the Lactopeptine, I want to find out whether you have in your mind that the first originator of any medicinal preparation is entitled to any protection.

A. If he gives it something to distinguish it from other similar preparations, something that is non-essential to the product itself, I certainly think the manufacturer should be entitled to protection to the extent that the peculiar appearance or characteristic of his product should be respected.

XQ37. Is it not rather his brand or the name given the product which is entitled to protection?

A. In some cases it is the brand only that is entitled to protection, and in other cases, name only, but in many cases, without regard to the question of patent or trade-mark, the name and product in so far as any peculiarity of that particular product is concerned, should be given protection. I mean by that, as in the case of Lactopeptine, if a manufacturer makes a product and colors it red, and the purpose of such coloring is to give individuality to his particular product, then no other manufacturer ought to duplicate that product, even though he might be free to do it as a general pharmaceutical item, and color the product red as did the original maker.

XQ38. Do you not remember that at the Indianapolis interview, after this suit was begun, and the first testimony had been taken, in Mr. Bradford's office, you, or Mr. Lilly, criticised the defendants for marketing Quin-Coco, whereupon Mr. G. A. Pfeiffer said that if that was the case you could be criticised for certain products originally put out by Warner or some of their affiliated companies, is not that correct?

A. That is correct so far as you have gone.

XQ39. To clear up the record in regard to a list of competitive preparations marked "Lilly List of Competitive Preparations," is it not a fact that this particular four sheets of paper so marked were produced yesterday at this meeting by the plaintiff?

A. I don't know.

MR. BRADFORD: Plaintiff's counsel states that the list which he introduced yesterday afternoon was found by someone connected with the plaintiff corporation, and I believe at Mr. Lilly's direction. Just from what department of the plaintiff corporation this list came I am not able to state, but I assume that it is an authentic copy of the list that was at one time used, as testified to by the present witness.

THE WITNESS: I would like to add to my previous answer that I never saw to my knowledge that particular list under discussion until it was handed me this morning by our counsel.

XQ40. By the words "that particular list" do you mean to indicate those particular four sheets of paper?

A. I do.

XQ41. What position did Sparks fill in the Lilly employ, who you say was responsible for this list, and the distribution of it among the Lilly salesmen?

A. General correspondent.

XQ42. How old a man was he?

A. I think about fifty.

XQ43. How long after you first became aware of the preparation and issuance of these lists of "competitive preparations" did the occurrence you have just mentioned take place, in which you said you gave directions to discontinue the further giving of these lists to the salesmen?

A. Immediately.

XQ44. What actual knowledge have you of the extent to which your salesmen did in fact turn into the company their respective copies of this list of competitive preparations?

A. I have no knowledge whatever. When I issue instructions I expect them to be carried out, and they are carried out.

XQ45. Your instructions first were to discontinue sending out these lists to salesmen, and secondly, to call in those that had been given out?

A. Yes, but the instructions were both given at the same time.

XQ46. You had no more concern after that whether the lists had in fact been returned by the respective salesmen?

A. If I made it my personal business to see that every order I gave was carried out I could not retain my position.

XQ47. How many salesmen, including detail men, did you have at that time traveling about?

A. Well, I can only roughly approximate it, something slightly over one hundred.

XQ48. How many have you had during the last fifteen months at a time?

A. One hundred and fifty to one hundred and sixty.

XQ49. I take it you consider you have an intelligent staff of traveling men, don't you?

A. I certainly do.

XQ50. In calling on druggists, are they not supposed to know the prices at which the house markets its products?

A. They have to carry a price list to keep them informed. Changes are frequent, and change sheets are sent them at regular intervals as changes are made.

XQ51. If they are well equipped in salesmanship, as doubtless your's are, are they not supposed to have some knowledge of the prices at which competitive articles are listed and sold?

A. Some knowledge, yes, sir. A man picks up that sort of information as he covers his territory, and gradually adds to such a fund of information.

XQ52. Then your trained and experienced salesmen in soliciting a sale from a druggist, and having a copy of this list of competitive preparations before

him, is presumed to have some knowledge at least of the prices of competitive articles on this list, is he not?

A. Not at all, not all of them, comparatively few of them. I have been in the drug business for a good many years. I have been over twenty-one years with Eli Lilly & Company, and in glancing over that list this morning I saw many items there I never heard of before. I don't know who makes them, and certainly I don't know what they sell for now or ever did sell for.

XQ53. But it is many years since you were traveling salesman?

A. It is a good many years, but I keep in pretty close touch with what is going on. That is my business.

XQ54. One of your trained salesmen in soliciting an order from a druggist would have no trouble in ascertaining from the druggist what price he had paid for the competing article, would he?

A. Not if the druggist knew what it was worth, no.

XQ55. By "worth" or market value, do you mean selling price?

A. To the merchant, yes.

XQ56. Will you look at the letter from the defendant to the plaintiff on page 39 of D. R. You will observe that it speaks of a request of the Lilly Company to the defendant in regard to Quin-Coco. It also in the second paragraph admits that Coco-Quinine was original with your house, and states that the defendant made that same claim for four items on the defendant's list. Bearing these two facts in mind, please state whether any offer from the Lilly Company was made to the defendant to discontinue any of the items mentioned in that letter on page 39, until after this suit was begun?

MR. BRADFORD: The question is objected to on the ground that the matter inquired about was fully covered in the examination of Mr. J. K. Lilly yesterday, who was the person who carried on this

correspondence, and if specific questions relating to these letters were to be asked they should have been asked of him. The four items mentioned in the letter were all commented upon by Mr. Lilly in his examination, and ample opportunity given for obtaining any additional information concerning them in his cross-examination.

THE WITNESS: I have no knowledge of it. The letter is addressed to Mr. J. K. Lilly, and not myself, and I have no knowledge of it whatever.

XQ57. Did Mr. Lilly usually confer with you about such matters? Had you knowledge of this correspondence, and what was going on between your company and the Warner Company in relation to these matters?

A. In a general way, yes. I knew Mr. Lilly was protesting against the further marketing of their Quin-Coco and trying in some way to relieve the situation.

XQ58. And you were representing the company in these interviews in regard to this product when you met Mr. G. A. Pfeiffer in Atlantic City?

A. Yes. I was there attending a meeting of the Homilia Club.

XQ59. You were representing the company, were you not?

A. Yes.

XQ60. When you voluntarily offered the defendant in your letter of May 3, 1915, produced by you today, to discontinue four specified items, and to raise the price of one other, that is the first specific offer made to the defendants to discontinue any items on your list which were on the defendant's list before you marketed them. Is that correct?

A. That was the first offer of that kind that I made to the William R. Warner & Company, or to Mr. Pfeiffer, and that was in response to the first statement from him that had come to me that he thought we ought to do such as that?

XQ61. When, and in what form, did a statement come from "him to me."

A. I was present and took part in the conversation in Mr. Bradford's office. When Mr. Lilly and I left Mr. Bradford's office I told Mr. Lilly that I thought we should accede to the suggestions made by Mr. Pfeiffer without regard to the case at issue; that if there was any question in Mr. Pfeiffer's mind as to any wrong action on our part we ought to make it right, and I had no intention whatever of introducing this correspondence in this case until I found that in spite of the fact that we had agreed to do that, and had done it, that after Mr. Pfeiffer knew of it, he nevertheless persisted in putting those items into this record, as if at the time he put them there we were marketing them in opposition to his express wishes.

XQ62. Do you not know, and have you not just admitted that G. A. Pfeiffer never requested you to discontinue any of your products on the ground they had been previously Warner products?

A. No, I don't know, and I think I have not admitted any such thing. I am simply not clear as to whether he made the direct request, or whether it was merely a statement he thought it was something we ought to do. The end was the same in either case.

XQ63. Let me refresh your memory. At that interview there was a discussion as to the propriety on the part of the defendant company in putting out Quin-Coco. Thereupon, in the conversation, Mr. Pfeiffer called attention to the fact that Lilly & Company had put on the market three or four products originally put out by Warner & Company. Is not that the true fact as to what occurred?

A. No doubt that is true, so far as you have gone, but following that I am quite certain that Mr. Pfeiffer made it plain to us that he felt we ought to withdraw those items, or make the changes or modifications suggested.

XQ64. I hand you a letter produced by you this morning, dated June 3, 1915, from G. A. Pfeiffer, for the attention of Mr. Charles J. Lynn, and ask you whether this letter does not correctly state what happened at the March interview in Indianapolis?

A. No, I cannot say that does, because my distinct impression is that the suggestion was given that Mr. Pfeiffer felt we should withdraw and change those items, as we later did.

XQ65. Are you not mistaken. Did not the conversation begin with the suggestion that perhaps the differences between the two houses indicated by this lawsuit could be adjusted in some way, and that thereupon Mr. G. A. Pfeiffer suggested that if differences were being adjusted there would be a certain merit in having the Lilly house give up certain of its products which had been originated by defendant. Is not that correct?

A. I think the conversation did begin in some such way as that, and yet I do not see how I could have failed to take from what you quote as Mr. Pfeiffer's statement the thought that he felt that we were marketing certain products, which they felt belonged to them, and that we ought not to market. I took that as a direct suggestion from him that we ought to discontinue them or modify them as the case might be, and in spite of the fact that whereas it looked as though our differences might at that time have been settled, and it appeared before we left the room that they could not be, I made up my mind that we would do the right thing in any event.

XQ66. You have referred to Meyer Brothers of St. Louis, as acceding to your request to discontinue their chocolate quinine preparation, which they called "Quinico." Were they not at the second time they agreed to discontinue it in some financial trouble?

A. They were and are in the hands of a committee of trustees, representing the creditors.

XQ67. And might not the very high price of quinine had something to do with it?

A. Not in the slightest.

XQ68. But the price of quinine was very high at that time, was it not?

A. It was above normal, but not anywhere nearly as high as it had been earlier in the present year. And I would like to say further while Meyer Brothers Drug Company are in the hands of trustees representing the creditors they are discounting all their bills and have paid the notes due at the end of the first year.

XQ69. It appears in this record that H. K. Mulford Company of Philadelphia made a chocolate quinine preparation as early as 1904. When did you first hear of that being on the market?

A. I cannot say exactly, but no doubt soon after it appeared, within a year or two, but it never was much of a product, and while it was an imitation of our Coco-Quinine it was a poor imitation.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ70. Referring to the items enumerated in your letter of May 3, 1915, to Mr. G. A. Pfeiffer, which of the items, for which you were furnished formulas by Mr. Hereth, formerly of the Searle & Hereth Company, were originated by him?

A. Liquor Tritici and Guaiacol Comp.

RDQ71. As to the other three items, are they what are commonly termed general line items or specialties?

A. General line items.

Re-direct-examination closed.

Re-cross-examination (not waiving objections).

By Mr. Rawle:

RXQ72. I understand this letter of May 3, 1915, shows your house in 1914 only sold twenty-six pounds of Calomel and Bismuth Powder, and up until the date of this letter in 1915 you did not sell any of it. Is that correct?

A. Yes.

Mr. Bradford: Counsel for defendant requests counsel for plaintiff to permit him to take from the sample bottles Nos. 1 to 10, introduced in Mr. Bibbens' deposition a small quantity for the purpose of examination and comparison. This request is granted, and the bottles are given to counsel for defendant for this purpose.

Mr. Rawle: Counsel for defendant states that in view of the relative time in the case in which the witness Bibbens produced the ten sample bottles, he will examine the contents of these bottles, and ask the Court at the proper time to permit the result of this examination to be made known as a part of the case if desired.

Re-cross-examination closed.

Deposition Closed.

Chas. J. Lynn.

November 28, 1916.

The parties met pursuant to adjournment, and taking of depositions was resumed as follows:

Present: Same as November 27, 1916.

J. K. Lilly, being called as a witness on behalf of plaintiff, in answer to interrogatories, by Mr. Bradford, testified as follows:

By Mr. Rawle: Counsel for defendant states on

the record that he has recently come into possession of, and has now in his hands, a copy of a tabulated list of medicinal preparations, arranged in two columns. The first column contains a list of medicinal preparations originated and introduced and marketed by many various manufacturers other than Eli Lilly & Company, arranged alphabetically. Opposite each preparation, in Column One, appears the name of a Lilly product, thereby indicating that each Lilly product is medicinally or therapeutically similar to the corresponding product for preparation in Column One.

This list was obtained by defendant and handed to their counsel about six months after the defendant's case was closed. The date was August, 1916. Defendant's counsel is instructed that this list was, since August, 1908, furnished by Eli Lilly & Company to its salesmen and to the trade, and has been in regular use by Eli Lilly & Company in its business as part of its salesmen's equipment more or less of that time.

As it is an Eli Lilly & Company list of precisely the same significance as the Warner list offered in evidence by plaintiff, and marked "Complainant's Exhibit Document No. 3" (whatever plaintiff claims that significance to be) defendant's counsel calls upon plaintiff's counsel to produce an original of such list.

This notice and call is given before the examination of the president of the plaintiff company.

By Mr. Bradford: No objection is made to the introduction of this list, and for such use as defendant's counsel may wish to make of it, and with the consent of counsel for the defendant, it is here offered in evidence, not only for the purposes of defendant's counsel, but also to show the Court how inaccurate the statement by counsel for defendant just placed of record is. Said list produced by counsel for defendant, if he consents, is here offered in evidence and marked "Defendant's Exhibit, Comparative List." It is not offered, however, on behalf of plaintiff, but by defendant's request on behalf of defendant.

By Mr. Rawle: Counsel for defendant asks counsel for plaintiff if he is willing, without objection, to have Mr. Lilly, who is now on the witness stand, and the general manager of the company, Mr. Lynn, who has been noticed as a witness, cross-examined as to this list, and the use made of it by the plaintiff in its selling business. If the statement made by defendant's counsel in putting this copy of a list on the record is inaccurate, this will enable the inaccuracies to be corrected.

By Mr. Bradford: So far as inaccuracies in the statement by defendant's counsel is concerned, respecting this list, the list itself is sufficient evidence. So far as questioning the witnesses, Mr. Lilly and Mr. Lynn when he shall be called, as to this list, no objection is made.

By Mr. Rawle: Defendant's counsel considers that his call has not been answered and asks for an answer; namely, the production of an original from the papers of the plaintiff company, being willing, however, to accept in place thereof an admission on the record that the typewritten paper, containing three sheets, produced by defendant's counsel, is a true copy.

By Mr. Bradford: Plaintiff's counsel is unwilling to admit that the paper produced is a true copy, but is willing to have it compared with any original list in possession of plaintiff, and later state on the record the result of such comparison.

By Mr. Rawle: Defendant's counsel asks plaintiff's counsel if he declines to produce an original from the Lilly papers.

By Mr. Bradford: I do not, if such is in existence.

By Mr. Bradford:

Q1. You are the same J. K. Lilly who previously testified in this case, being the president of the plaintiff corporation?

A. I am.

Q2. Mr. G. A. Pfeiffer, when called as a witness for defendant in this case, in answer to Q78, page 19, Defendant's Record, and the following questions on pages 20 and 21, testified that your house puts out preparations similar to specialties put out by other houses, and subsequently to the putting out of such specialties by other houses, and he introduced a list of preparations put out by your house, comparing them with what he claims are specialties put out by other houses prior to the time when your named preparations were put out. This list is published on page 560 of Defendant's Record, to which I call your attention, and will ask you to go through this list, item by item and explain wherein Mr. Pfeiffer was in error, if at all, and in what respect, if any, the marketing of your preparations here named differs from the marketing of Quin-Coco by the William R. Warner & Company, as shown by the evidence in this case.

A. First, I would like to state that it is the policy of our concern not to infringe upon any proprietary rights that may be possessed by anyone exploiting a proprietary article.

Proceeding with this list: Albolene. The proprietors of the word "Albolene" have not the slightest proprietary right on colorless mineral oil, this being common property and a substance well known for many years prior to the exploitation of Albolene. Therefore, the only proprietary feature in this item is the name, which Eli Lilly & Company have never used, nor anyone else to our knowledge.

Analgesine. This is of foreign origin. French, I believe, it being a very well known compound of ingredients that have been used for generations, but brought into this country simply under a proprietary name. It is composed of petrolatum, menthol and thymol. Eli Lilly & Company have never violated any proprietary rights in this preparation.

Angiers Emulsion. A combination of petroleum oil with hypophosphites, a combination well known to, and used by physicians, and not original with Angier, and the only proprietary rights he has is in the name.

Antiphlogistine. Used in Germany fifty to sixty years ago; not original with the proprietors; being a poultice containing aluminum, silica, and other ingredients. The only proprietary rights possessed by the Denver Pharmacal Company, the manufacturers, is in the word "Antiphlogistine."

Arsenauro. A case of the same nature as the preceding. I believe now it is included in the National Formulary.

Bromidia. A combination of sedatives and narcotics made by Battle & Company, being a compound frequently prescribed by physicians prior to the adoption of the word "Brimidia." The proprietary rights in the word "Bromidia" have been recognized by everyone, but various combinations under various names of the same nature as the Bromidia formula have, and are and always have been common property.

Calenduline. A word adopted as a proprietary name to Glycerole Calendula, the origin of which is so remote that my memory does not serve me.

Calolactose. A proprietary word adopted by Searle & Hereth Co. many years ago for the well-known combination of calomel with bismuth. The only proprietary rights held by the Searle & Hereth Company was in the name "Calolactose."

Campho Penique. Similar case to the preceding.

Creo Terpin. I am not familiar with the formula of that preparation, and do not believe that the proprietors gave a complete formula with proportions, but Eli Lilly & Company have, for some years, marketed an elixir creosote and Terpin hydrate compound in response to calls for a preparation under that title, a formula with full particulars as to ingredients and quantities being given.

Castoria. It is a well-known fact that this formula is no longer proprietary, even if the exact formula were known. The original preparation known as "Pitcher's Castoria," made by Fletcher, now has competition from the Pfeiffer Chemical Company, even under the name "Castoria." Laxative Carminative, made by Eli Lilly & Company, is an ordinary formula of well-known ingredients and is not the same as the original Castoria.

Compound Digestive Powder. An ordinary mixture of well-known ingredients with a pharmaceutical title, and is not considered as possessing proprietary rights, as there is nothing distinctive or characteristic in the mixture or in the name. Generally regarded by reputable manufacturers as being common property.

Eczemacide. An ordinary mixture of well-known ingredients used for the purpose of an eczema lotion for many years, and the only proprietary rights, as far as I know, are in the word "Eczemacide."

Elixir Femella. It has no connection whatever with Femagen Lilly, the formulas being entirely different, and the formula for Femagen Lilly having been designed by Mr. James E. Lilly. The comparison, therefore, is not warranted.

Elixir Salicylic Compound Warner. An ordinary compound of well-known ingredients, given an ordinary pharmaceutical title and not considered by manufacturers generally as possessing proprietary rights. Mr. G. A. Pfeiffer, indicating to Eli Lilly & Company, that they considered that they did possess proprietary rights in the title, Eli Lilly & Company acquiesced and changed their title to an Elixir Acid Salicylic Compound; this, in deference to the desire of William R. Warner & Company, and not from the belief of Eli Lilly & Company that said Warner possessed any proprietary rights.

Essence of Pepsin, Fairchild. After liquid prep-

arations of pepsin had been on the market many years, the original liquid pepsin having been marketed by our Mr. James E. Lilly, of the firm of Lilly & Phelan, Evansville, Indiana, about the year 1869, Fairchild Bros. & Foster placed on the market an active, efficient preparation under the name of "Essence of Pepsin." While the liquid form of pepsin was not original with them, their preparation did possess certain peculiarities, and they gave it an ordinary title. Eli Lilly & Company refrained from making an essence of pepsin for over ten years after essences of pepsin had appeared upon the market in great numbers by different manufacturers. Still feeling that ethically, if not legally, Fairchild Bros. & Foster should have a monopoly of this preparation, we bought and sold the original Fairchild article. Upon discussing the matter with Mr. B. F. Fairchild, one of the proprietors, he stated that under the circumstances we were not justified in refraining from making essence of pepsin, and after this conversation we manufactured an essence of pepsin which now seems to have become common property, as the proprietors did not protect their rights as they might.

Glyco-Heroin (Smith). My memory does not serve me as to the origin of this compound, but it is a mixture of well-known ingredients that have been used by physicians for many years for the purposes mentioned, and Eli Lilly & Company, nor any other manufacturer, as far as I know, have infringed upon the title that Smith & Company selected for this compound.

Glyco-Thymoline. My knowledge of this compound is essentially the same as the preceding.

Grays Glycerine Tonic. A compound of well-known ingredients without originality in its selection or composition, and the only proprietary rights considered by manufacturers generally is in the title selected by the Purdue Frederick Company.

Guaiatonic, Searle & Hereth. I am not familiar with the working formula of Guaiatonic, Searle & Hereth, but I would consider that this combination of well-known ingredients that have been utilized by physicians for many years would leave the title as the only proprietary rights possessed by Searle & Hereth Company.

Fellows Hypophosphites. Combinations of the various hypophosphites had been known and used by physicians years before the introduction of this item by Fellows & Company. It has never been my understanding that Fellows & Company claim any proprietary rights other than the name "Fellows" to designate their particular product.

Hires Root Beer Extract. As far as I know, Mr. Hires did not originate the first root beer. He marketed a root beer under the name of Hires, but no one has ever considered that he had proprietary rights in a root beer, or a concentrated root beer extract. Considered by all manufacturers common property.

Lactopeptine, New York Pharm. Asso. In my judgment the proprietors of Lactopeptine possess, or did possess, proprietary rights in this preparation, both in naming and in the preparation itself, for the reason that in addition to the coined title, which no one has questioned, they gave their preparation a distinctive color and flavor to give it distinguishing characteristics. To my knowledge, however, they have never asserted these rights, and so many years have passed that the preparation has been introduced into the national authorities, and seems to have become common property. In common with all other manufacturers, Eli Lilly & Company make elixir lactated pepsin of the peculiar color desired by physicians, but the facts are as above stated to the best of my knowledge and belief.

Listerine, Lambert Pharmacal Company. Eli Lilly & Company are not informed as to the formula

of listerine, but antiseptic solutions containing certain volatile oils and other antiseptic ingredients were known and used years before listerine was placed upon the market. My belief is the only proprietary rights possessed by the Lambert Pharmacal Company reside in the title, but Eli Lilly & Company have never made any effort to duplicate the preparation, but make a competing article to fill the same field.

Liquid Peptonoids. To the best of my knowledge and belief the proprietary rights in this article reside in the title "liquid peptonoids." A solution of peptones in combination with other items is evidently common property and is not a parallel case to the present case where the preparation itself has been given distinctive characteristics as well as in the title.

Liquid Peptonoids with Creosote and Guaiacol. Same as preceding.

Maltine Combinations. In my judgment the proprietors of Maltine have never possessed, nor to my knowledge have they ever claimed proprietary rights in the combination of an extract of malt with other therapeutics. It goes without question that they possess the title "Maltine," which no one to my knowledge has ever infringed upon. In manufacturing malt extracts with combinations Eli Lilly & Company have never sought to deceive or duplicate in appearance, using a different extract of malt and presenting them to the profession on their own merits. Malt extracts and combinations were known and used many years prior to the establishment of the title "Maltine."

Milk of Magnesia, Phillips. I am not informed as to the origin of milk of magnesia or a preparation of this nature, but inasmuch as reputable manufacturers throughout the world have made milk of magnesia and used that ordinary pharmaceutical title for it I take it that the proprietors of Phillips possess rights only in the name of Phillips.

Passifloria, Daniel. This preparation is entirely

different and has no connection in similarity of formula with Lilly's Passolaria, the latter preparation having originated as far as title is concerned with Lilly & Company. The formula is an ordinary compound of well-known ingredients and is considered common property, inasmuch as no effort was made to give it distinguishing characteristics not possessed by the formula in its natural state.

Pepto Mangan "Gude." I am not informed as to the origin of this formula but it is composed of well-known ingredients used by physicians for many years, and the proprietors have never to my knowledge maintained any proprietary rights except in the title.

Pil Case. Cathartic Hinkle. This combination of well-known ingredients that have been used for many years was, I am informed, originally the prescription of Dr. Hinkle, and our understanding was that this prescription had been dispensed by many pharmacists; that William R. Warner and Company added them to their list. Other manufacturers, considering this an ordinary line item, responded to the demand and made the pill under the same item and formula as has been the case in thousands of other formulas. The William R. Warner & Company, however, having indicated to Eli Lilly & Company that they considered that they possessed a certain proprietary interest in the name "Hinkle," the original Dr. Hinkle being a relative of Mr. Warner's, we relinquished the use of this title in deference to their representations.

Resinol. Lilly & Company do not market a preparation under the name of "Resinol" or "Resinol Compound." Resinol, as made by the Resinol Chemical Company, is of a formula with which we are not familiar. Resorcinol, however, is a well-known ingredient of ointments both alone and in combination. Ointment Resorcinol Compound, Lilly, in no way infringes upon the rights of the proprietors of Resinol, for Resorcinol Compound, Lilly, is an ordinary com-

pound of well-known ingredients under a pharmaceutical title, and is not to our knowledge identical with the formula of Resinol, with which we are unacquainted. The Resinol Chemical Company do possess proprietary rights, no doubt, in Resinol, but not in the various combinations of Resorcinol.

Syr. Tolu & Heroin Co. An ordinary compound of well-known ingredients given a title of an ordinary pharmaceutical, with no particular characteristics either in title or product, and, therefore, considered by reputable manufacturers generally as common property.

Taka Diastase Liquid, Parke Davis & Company. The Liquid Diastase, Lilly, mentioned in connection with this item is an entirely different preparation, Taka Diastase Liquid being a preparation of Takamine's Diastase, made by the growth of certain molds, while Liquid Diastase, Lilly, is an ordinarily percolated product from malted barley and standardized as to diastatic strength. There can, therefore, be no comparison here where the products and titles are absolutely different.

Tr. Digitalis Fat Free. Making a Fat Free Digitalis is an ordinary pharmaceutical process, manufacturers generally have never considered the Searle & Hereth Company had any proprietary rights in the ordinary title Tr. Digitalis Fat Free, or in the process of making the same.

Tritica S & H, Searle & Hereth. This is a concentrated preparation of Triticum, or Couch Grass. The Searle & Hereth, no doubt, have proprietary rights in the name "Tritica," and it having been brought to us, and we becoming convinced that their proprietorship also followed into the product itself, it being much more concentrated and of distinguishing characteristics, we relinquished its manufacture and it is no longer on our list.

Wine of Extract of Cod Liver Oil with Malt and

Hypophosphites. This combination of well-known ingredients, to which no distinguishing characteristics whatever have been given, and the use of the ordinary pharmaceutical title, does not in the judgment of manufacturers generally constitute proprietorship. The only proprietary rights would be in the name Wampole for that particular product.

With the possible exception of an elixir lactated peptine, the particulars of which were given, none of the items in the above list are comparable with the present case, for in Coco-Quinine a distinguishing, non-essential characteristic was given the product to distinguish it from ordinary mixtures, and a distinguishing title also selected.

At this point the taking of this deposition was adjourned until November 28, 1916, at 2.15 P. M.

November 28, 1916, 2.15 o'clock P. M.

The parties met pursuant to adjournment and taking of depositions was resumed as follows:

Present: Same as in forenoon.

J. K. LILLY, recalled on behalf of plaintiff, resumed his testimony as follows:

By MR. BRADFORD:

Q3. Will you please explain on the record your understanding of the difference between what many witnesses in this case have referred to as "general line items" and "specialties," and which of the items in the list you have just testified concerning belong to the general line class, and which to the class of specialties?

A. A line item is an ordinary formula of well-known ingredients with an ordinary pharmaceutical or medical title. A specialty is supposed to be an article

in which the maker has proprietary rights either in the title or composition or both. As indicated in the detail description of the items on the list designated as "Defendant's Exhibit, G. A. Pfeiffer's List of Lilly Products," most of these are specialties in name or brand only, and where competing items are manufactured by Eli Lilly & Company our understanding is that they are general line items with us, and only proprietary rights exist in the titles to those who have selected said titles for such combinations.

Q4. By "pharmaceutical name" which you have used in your answers many times, I understand you to mean a purely descriptive name from a pharmaceutical standpoint. Is that correct?

A. Yes.

Q5. In the deposition of Mr. G. A. Pfeiffer, a witness for defendant, in answer to Q112, page 27, defendant's record, Mr. Pfeiffer refers to a number of chocolate or cocoa and quinine mixtures similar to Quin-Coco, as having been on the market for a number of years, some of which prior to the time Quin-Coco was marketed. I will ask you to refer to this list and state what you know about this subject.

MR. RAWLE: Question is objected to so far as it seems to call for his evidence.

A. There was no liquid preparation of quinine sulphate of a bitterless nature prior to the creation and marketing of our Coco-Quinine. There were some syrups containing the combined alkaloids of cinchona, in which the alkaloids in an insoluble form were suspended, but this is entirely different from the suspension of pure quinine sulphate as it is in Coco-Quinine. There was on the market tablets of quinine with chocolate in which the quinine was in the form of an insoluble tanate. This is entirely different than a suspension of pure quinine sulphate in a chocolate flavored syrup, as in Coco-Quinine. The first preparation of the same nature as Coco-Quinine, of which I had

knowledge, was known as Quin-Coco, William R. Warner & Company. Some of the preparations mentioned in the aforesaid answer were subsequently known to me and some were not.

Q6. Do you recall approximately when the preparation known as Quin-Coco was first called to your attention, and by whom, and under what circumstances?

A. My memory does not serve me as to the specific instance.

Q7. Did you ever make any protest to any of the officials of the William R. Warner & Company respecting their manufacture and sale of this item Quin-Coco, and if you did, to whom?

MR. RAWLE: Objected to as not proper for rebuttal.

A. Upon the occasion of a visit by Mr. G. A. Pfeiffer to my office in our laboratories, I expressed the desire that he discontinue the manufacture of this item Quin-Coco, but upon his stating that it was one of the assets which they purchased from the Searle & Hereth Company, he could not see his way clear to accede to my desire. Thereupon I dismissed the subject.

Q8. During the taking of Mr. Pfeiffer's deposition there was introduced on page 38 of defendant's printed record a letter purporting to be from you to Mr. Pfeiffer, to which I call your attention and ask you whether or not the oral interview by you with Mr. Pfeiffer was before this letter was written or afterwards?

A. I am not positive, but I should judge it was after my interview with Mr. Pfeiffer at my office. The letter was written by me after Mr. Pfeiffer's visit to my office.

Q9. How long, approximately, was it before this interview that your attention had been called to the Warner preparation and its sales on the market by the Warner Company?

A. I cannot answer that question. My memory does not serve me back of 1909.

Q10. Did you have more than one interview with Mr. Pfeiffer on this subject?

A. I met Mr. Pfeiffer later after the interview mentioned at Atlantic City. The matter was discussed in his presence at a meeting of the Homilia Club. The exact words of the conversation I do not recall.

Q11. Comparatively speaking, how have the products of the other houses referred to in Mr. Pfeiffer's answer Q112 been considered by you as taking the place in the market of Coco-Quinine?

MR. RAWLE: Objected to as irrelevant and inadmissible.

A. All of these preparations of which I have knowledge closely resemble Coco-Quinine, and could be used in the place of it with more or less success.

Q12. To what extent, comparatively speaking, so far as you know, has the sale of these other preparations been pushed in the same or in a similar manner to that used in pushing the sales of Quin-Coco?

MR. RAWLE: Same objections.

A. The sale of Quin-Coco was pushed with greater energy than any of the others of which we had knowledge, and comparatively little interference with our trade was discovered from any of the preparations other than Quin-Coco.

Q13. At the time this suit was brought you had knowledge of some of these other preparations being on the market?

A. I did.

Q14. Why was it decided to bring this action against William R. Warner & Company rather than against some of the other concerns named?

MR. RAWLE: Objected to as irrelevant and inadmissible.

A. Because Quin-Coco was the oldest preparation within our knowledge and had secured the largest volume of sales.

Q15. You have referred to the Homilia Club. This subject was also discussed by Mr. Pfeiffer in his deposition. I call your attention to Mr. Pfeiffer's testimony beginning with his answer to Q156 on page 43 of defendant's record, and ask you to read his answer and explain your understanding of the purposes and objects of the Homilia Club.

A. Mr. Pfeiffer's reply is correct and I might add that another purpose was to cultivate the best along ethical lines, and to obviate as far as possible unfair competition in trade.

Q16. There was introduced in evidence a booklet marked "Defendant's Exhibit Homilia Registrations", and Mr. Pfeiffer explained in reference to these registrations in the Homilia Club. I ask you to give your version of the purposes of these registrations and the significance of the different classes.

MR. RAWLE: Objected to, because the book speaks for itself and indicates in a note at the bottom of the page that Class A refers to name only, and Class B refers to registered name and formula.

A. When this list was first formed it was found impracticable to make it retroactive, that in considering the long list of preparations that were then made and claimed as specialties by each house could not be satisfactorily agreed upon. Therefore, everything previously made was thrown into Class A with the distinctive understanding by formal action of the Homilia Club that competitors would respect that registration not only in name but in substance also. Subsequent to this original action, all new items were classified in either A or B, according to the desires of the applicant and the action of the club, Class A then being protection in name only; Class B, both name and substance.

MR. RAWLE: Answer is objected to. If what the witness has stated is the result of Club action intended to have some significance, the minutes

must be produced. If it was merely the result of discussions between some gentlemen, it could have no legal weight. I understand that Mr. Lilly, the witness, was the registrar of the Homilia Club.

Q17. Do you recall about when the Homilia Club held its first meeting?

A. It must have been not long after the passage of the Food and Drugs Act of 1906, at the Waldorf Hotel, in New York City.

Q18. What bearing did the passage of the Food and Drugs Act of June 30th, 1906, have upon the meeting of this Club?

A. The formation of the Homilia Club followed several informal meetings of representatives of various manufacturing pharmaceutical houses to co-operate in meeting the requirements of the new Food and Drugs Act of June 30th, 1906.

Q19. I show you a booklet and ask you what it is.

A. This is the Fourth Issue of the list of preparations registered with the Registrar of the Homilia Club in the classes as agreed upon.

MR. BRADFORD: The booklet referred to is offered in evidence and marked "Plaintiff's Exhibit Homilia Club List of Registrations".

Q20. Do you know when this particular booklet was published?

A. Not the exact date, but I should judge about four years ago.

Q21. Is the Homilia Club still in existence?

A. No, not formally. It is merged now into the National Association of Manufacturers of Medicinal Products, which serves the purposes for which the Homilia Club was organized.

Q22. Will you please explain the methods employed by your house in selling or introducing your products to the medical profession and drug trade?

A. What is termed "line items" are simply placed

upon the list and find their sale through our regular organization of salesmen and through the ordinary purchases of our customers. Specialties such as Coco-Quinine, specialties in which we possess proprietary rights, such as Coco-Quinine, are sampled to physicians. Our salesmen, combination men, and strictly detail men call upon physicians demonstrating its merits and inviting their prescriptions. The preparation is also largely advertised in medical and pharmaceutical papers and circularized through the mails to druggists and physicians.

Q23. It has been suggested by Mr. Pfeiffer and some of the other witnesses for defendant that detail work is rather going out of fashion, and not either as popular or as much practiced as it once was. What is your view on this subject?

A. I cannot speak from an exact knowledge of other manufacturers, but we are doing more of such work every year, and it is now a large factor in our expense and seems efficient in the creation of demand for special items as well as the general line. I can also speak from exact knowledge that the largest pharmaceutical house in the world is doing more of this work than ever.

Q24. Referring to "Plaintiff's Exhibits, Sample Syrups, No. 1 to No. 10", inclusive, introduced during the course of Mr. Bibben's examination yesterday, will you please state whether the suspending agents used in their preparation, namely Mucilage of Quince Seed, Tragacanth, Gelatine, Gum Acacia, Dextrin, Mucilage of Irish Moss, and so forth, are substances obtainable in commercial quantities such as to enable a manufacturer to use them if he desired in the manufacture of these preparations on a commercial scale?

A. These are all articles of commerce easily secured, and are not so expensive in the proportions used as chocolate.

Q25. How would these preparations as a whole, I

mean the complete compound in each sample, compare in the expense of manufacture with the expense of manufacturing Coco-Quinine?

A. Slightly less than Coco-Quinine.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle (without waiving objections):

XQ26. Referring to "Defendant's Exhibit, G. A. Pfeiffer's List of Lilly Products", was not Antiphlogistine introduced and marketed by the Denver Chemical Company prior to Lilly & Company marketing Osmosum, Lilly?

A. Yes, many years before.

XQ27. Is not your product Osmosum, Lilly, competitive with Antiphlogistine in the market?

A. It is.

XQ28. And is it not a similar product in character and effect to Antiphlogistine?

A. Used for the same purposes, but different composition in some respects.

XQ29. Can you say in what respect it differs?

A. The proportions of glycerine and aluminum silicate are different, and Osmosum, Lilly, contains methyl salicylate, which is not, to my knowledge, contained in Antiphlogistine.

XQ30. Have you knowledge of the formula and ingredients and constituents of Antiphlogistine?

A. Not as to proportions or as to all of the ingredients.

XQ31. Can you give substantially the formula of your Osmosum out of your head, if desired?

A. I could not give the complete formula.

XQ32. Do you pretend to know the formula of Antiphlogistine?

A. Not as to every ingredient, only in the principal ingredients, namely, glycerine and aluminum silicate.

XQ33. Are not Antiphlogistine and your Osmosum recognized and understood in the trade as similar preparations?

A. Yes, of a similar nature and use.

XQ34. Did not the exploitation of Antiphlogistine by the Denver Chemical Company create a market in the United States for that class of preparations?

A. Yes, it enlarged the demand materially.

XQ35. And to a certain extent, introducing a competitive article by your house, you got some of the benefit of that market?

A. Undoubtedly.

XQ36. Was not Glyco-Heroin introduced and exploited by Martin H. Smith & Company before Eli Lilly & Company marketed its product "Glycerole Heroin Comp."?

A. Yes.

XQ37. And isn't it, your said product, competitive with the Smith product?

A. Yes.

XQ38. And is it not of a similar nature in character and effect to the Smith product?

A. Not identical in formula, but of the same general nature and for the same use.

XQ39. Is it not recognized in the trade as being a similar article?

A. Yes.

XQ40. And did not the exploitation by Martin Smith & Co. of Glyco-Heroin create a market in the United States for that class of preparations?

A. It materially enlarged the demand for such preparations.

XQ41. And to a certain extent, at least, your Glycerole Heroin Comp. got some of the benefit of that market, did it not?

A. Yes.

XQ42. Could you, if desired, give the formula of your Glycerole Heroin Comp. out of your head?

A. No, not out of my head, but I could give it from our records.

XQ43. Of course, you do not pretend that you could give at this moment the formula of Smith's Glyco-Heroin, do you?

A. No.

XQ44. Was not Tincture Digitalis Fat Free introduced and marketed by Searle & Hereth before Lilly & Company introduced and marketed its Tincture Digitalis Fat Free, Lilly?

A. Yes.

XQ45. And is not your said product in competition with the Searle & Hereth said product?

A. Yes.

XQ46. And are not they similar in character and effect?

A. Yes.

XQ47. And so understood in the trade?

A. Yes.

XQ48. And you understand that the exploitation of Searle & Hereth of its said product created a market in the United States for that class of preparations?

A. I do not know that, but it evidently was a factor.

XQ49. And perhaps it is true your house shared somewhat in that market when it introduced its said product?

A. Yes.

XQ50. Was not Guaiatonic introduced and marketed by Searle & Hereth before Eli Lilly & Company had marketed its product under the name of Guaiacol Comp. Lilly?

A. Yes.

XQ51. And is not Guaiacol Comp. Lilly competitive with Guaiatonic, Searle & Hereth, in the market?

A. Yes.

XQ52. And similar in character and effect, one to the other?

A. Yes.

XQ53. In your opinion did the exploitation by Searle & Hereth of its product Guaiatonic, create or help to create in the United States a market for that class of preparations?

A. It was a factor.

XQ54. And, perhaps, your house shared somewhat in that market?

A. Yes.

XQ55. Could you, if desired, and out of your head, at the present moment, give the formula of Guaiacol Comp. Lilly?

A. No, sir.

XQ56. And, of course, you could not of the Searle & Hereth Guaiatonic?

A. No. I could produce records.

XQ57. Was not Elixir Salicylic Comp. introduced and marketed by William R. Warner & Company, the defendant, before Eli Lilly & Company manufactured and marketed Elixir Salicylic Acid Comp.?

A. Yes.

XQ58. And is not your said Elixir Salicylic Acid Comp. competitive with Elixir Salicylic Comp. of Warner?

A. Yes.

XQ59. And similar in character in effect, one to the other?

A. Yes.

XQ60. And so understood by the trade?

A. Yes.

XQ61. How far did the exploitation by Warner & Company of their Elixir Salicylic Comp. create a market in the United States?

A. Being considered a general line item, it was no doubt a great factor in increasing this line of formula.

XQ62. And probably your article, when introduced, had some share in that market, is that right?

A. Yes.

XQ63. Could you now, if desired, and offhand, give the formula for Elixir Salicylic Acid Comp.?

A. No.

XQ64. And, of course, you could not for the Warner product?

A. No.

XQ65. I have now asked you a series of questions in relation to five or six of the preparations contained in this Pfeiffer list of Lilly products, and I now ask you to state in general terms whether the remaining items in column 1 of this list were not introduced and marketed by the respective houses named in column 2, before the respective Lilly products in column 3 were put on the market?

A. Possibly all of these in column 1 were introduced by the people in column 2 previously to the listing by Lilly of the preparations in column 3 with the possible exceptions of Elixir Femella, which, as stated in testimony, is not the same as Femagen; Maltine Combinations; and Liquid Diastase; with the possible exception of those three.

XQ66. Then in your opinion, having carefully looked over the list, those are the only exceptions which you make to your answer?

A. As far as I know.

MR. RAWLE: Defendant's counsel, having at the morning session called upon plaintiff's counsel to produce an original from Eli Lilly & Company's papers of a certain list which defendant's counsel himself produced this morning, now asks for a specific answer to his call and asks whether plaintiff's counsel will produce such an original list from that source.

MR. BRADFORD: Counsel for plaintiff states that he has been unable to verify the correctness of the list submitted by counsel for defendant, but produces a similar list herewith furnished him by

plaintiff as a copy of a list that was at one time used in their business. This list is also offered in evidence and marked "Defendant's Exhibit, Lilly List of Competitive Preparations".

XQ67. In this list which has just been produced on call, marked "Lily List of Competitive Preparations", is the second name, printed in capitals, in respect to each item, the Lilly product, and the name preceding it, printed in ordinary type, the name of the product of the other house?

A. Yes, these have the names of the competing items.

XQ68. In what years, approximately, did Eli Lilly & Company use this list, or a similar list in its business?

A. I cannot answer that question but it was such a list as has not been used for a great many years.

XQ69. Can you state approximately when it was used or when you began to use it?

A. No.

XQ70. Was its use discontinued more than five years ago?

A. I should judge longer than five years ago. Of course, some salesman might have kept such a list in his possession for less than five years.

XQ71. Then by saying it has not been used for a certain number of years you mean no more than to say you have not issued new editions of it; is that correct?

A. Yes.

XQ72. But you have not required the salesmen to turn in their old copies, have you?

A. I cannot say that, I do not know. New men are not furnished with it.

XQ73. Who would know when it was used?

A. Mr. Lynn might possibly locate the years. He has been in closer touch with the selling department.

XQ74. Would Mr. Caperton know?

A. Possibly.

XQ75. Might it have been in use, say, six years ago, and for four or five years prior to that?

A. Possibly so.

XQ76. When it was in use, were copies of it handed to your salesmen as part of their outfit?

A. Yes.

XQ77. Were copies of it sent to the jobbers with whom you dealt?

A. Not to my knowledge.

XQ78. Did the salesmen distribute it to the jobbers?

A. No, sir; for the salesmen were furnished but with one copy.

XQ79. Please compare this list as produced with the G. A. Pfeiffer list at page 560 D. R., and state whether or not a number of the items of the Pfeiffer list are not found on this competitive list just produced?

A. I see there are a number of items on the Pfeiffer list that are on this list.

XQ80. Are the Lilly items on this competitive list "Specialities"?

A. There are a few items that we would term "Specialties", but in the main they are what we term "General line items".

XQ81. Please pick out the specialties.

A. Kreseptol, which, since this list, has been discontinued. Acetoform Dusting Powder. Cas-Cathartic. Prunicodeine. Passolaria. Formaseptol. Femagen. Laxalithia. All the other items are what we term "General line" items.

XQ82. About how many specialties is your house marketing now?

MR. BRADFORD: Objected to as incompetent, irrelevant and immaterial, and not cross-examination, having no bearing on the direct-examination or on the examination based upon this list of competitive preparations which has been introduced, without objection by plaintiff.

A. We have very few items that could be called specialties, and upon which we claim proprietary rights. The exact number I could not give without a study of our list.

XQ83. You have yourself, when examined in chief, defined "Specialties". I will ask you whether you mean to say that specialties with your house are only those things upon which you assert a proprietary right, is that correct?

A. That is correct.

XQ84. Have you not about twenty pages of your catalog devoted to a list of specialties numbering probably one hundred items or more?

MR. BRADFORD: Objected to as incompetent, irrelevant and immaterial.

A. What you refer to is Part 2 of our list which consists of miscellaneous general line items and a few specialties. The heading of that section of our catalog may be a little misleading. As you will notice it says "Miscellaneous Specialties". It should be more specific and say "Miscellaneous Preparations and Specialties", because all of the preparations in that Part 2 are not specialties, and it has been corrected for the next list.

XQ85. Looking at this competitive list, were not a considerable number of the items therein introduced and exploited by other drug manufacturers before Lilly & Company introduced and marketed its corresponding items in this list?

A. That is entirely too blanket a question to be answered by yes or no. Many of these Lilly preparations have been in use and manufactured by all manufacturers for so many years that their origin is unknown to me.

XQ86. Are the Lilly items in this competitive list similar in character to the corresponding items manufactured by another house?

A. Not in all cases. They are designed simply to

occupy the same field and to compete for the field, and are not made identical in color, character and formula, except in certain cases where it is an ordinary formula put up in an ordinary way under a pharmaceutical title.

XQ87. I think you said this morning that the formula for Pitcher's Castoria was secret. Is that correct?

A. I will answer that question this way. If I did state the formula was unknown, I should have qualified by stating it was unknown to me. Castoria is a patent preparation upon which the patent has run out and the formula as disclosed in the patent is known.

XQ88. Do you know who introduced and marketed Pill Evacuant?

A. Parke, Davis & Company were the first to make that formula under that name.

XQ89. I see in Eli Lilly & Company's catalog of 1916-17 on page 46 a title under Pills as follows: "Evacuant, see A., S., B. and I., Lilly." What was the reason for putting this title in your catalog at that place?

A. In common with all other manufacturers, that formula is made under various titles. We formerly listed that pill as Pill Evacuant, but on the formation of the Homilia Club it came to our knowledge that Parke, Davis & Company originated that title and considered that they had proprietary rights in it. We discontinued the use of the word Evacuant on all of our labels and simply made a cross reference to the new formula.

XQ90. And Parke-Davis lists this item as Pill Evacuant, do they not?

A. They do.

XQ91. Do you know what drug houses make a preparation called Little Devils?

A. I do not. The origin of that term is so ancient that my memory does not serve me.

XQ92. You do not know who makes it?

A. No.

XQ93. Do you market a product under that name?

A. We do not. There is a couple of laxative pills called L. D. No. 1 and L. D. No. 2, I suppose because we were too cultured to say "Little Devils". I do not know the origin of that.

XQ94. Do you know what house markets it?

A. I do not and never did.

XQ95. You have spoken of proprietary rights. What do you mean, what kind of a "right"?

A. That is a general term, as I use it, to indicate originality of substance, ingenuity, and originality in presentation and exhibition, and again it may be a proprietary right in a matter of a coined name.

XQ96. Of course, if the article were covered by United States patent, it would be a proprietary, would it not?

A. Yes.

XQ97. If the name of the product were covered by a registered United States trademark, it would be a proprietary within your understanding, is that correct?

A. Yes.

XQ98. Are there any other classes of protection than those two in your mind when you use this term?

A. Yes. In my opinion, and I think it has been demonstrated, that proprietary rights may exist outside of patents and trademarks and registrations.

XQ99. Does the term specialty mean much more than that the house whose specialty it is said to be, is using extra efforts to push it on the market?

A. Yes, and I think it means many other things. It means in many instances the question of proprietorship even though it may not be pushed with great energy. There may be several kinds of specialties, proprietary and non-proprietary. For example, we make a specialty of manufacture of empty capsules in a large way, and push them energetically, but have no proprietary rights. This would be a non-proprietary specialty. Alcresta tablets of ipecac is a type of what I mean in the way of a proprietary specialty.

XQ100. For what reason are they proprietary?

A. In that they were invented by us and the only method of giving ipecac alkaloids by the mouth without giving nausea.

XQ101. You mean it was patented by your house?

A. This product bears no direct patent as yet. I believe that would be our property whether patented or not.

XQ102. Is Alcresta a coined name, or does it indicate an ingredient?

A. It is purely a coined name and means nothing.

XQ103. When a particular product has been a specialty of one house and a lot of other houses have marketed the same product, or a similar product, do you consider it is to be called a specialty in respect to the first house and a line in respect to the others?

A. It depends entirely upon the nature of the preparation and the title employed. If it is an ordinary pharmaceutical preparation, made up of well known ingredients, without any ingenuity or invention displayed, it is not generally considered proprietary. If the title is of an ordinary pharmaceutical or medical nature, manufacturers and the trade generally consider it common property. If, however, the manufacturer should use for this ordinary compound a coined name or title, it is generally conceded he has proprietorship in that particular title.

XQ104. By a "title of an ordinary pharmaceutical or medical nature" do you mean to include what is generally called a descriptive title; namely, a title made up of the names of some or all of the ingredients?

A. Yes, that is one sort of a title of that nature.

XQ105. I think you spoke this afternoon of chocolate quinine preparations put out by various competitors of yours, and I think you said that the defendants were the first to put out such a product. Mr. Mulford, of H. K. Mulford & Company, of Philadelphia, has testified they put out a "Syrup Quinine with Chocolate,

H. K. Mulford Company", in February, 1904. Do you know anything about this (referring to D. R. page 439, XQ50)?

A. I do not. If that be true, I know nothing of it.

XQ106. Was not that date of February, 1904, some time prior to the time at which you heard of Quin-Coco, Searle & Hereth, being on the market?

A. Evidently from the testimony it was between two and three years before I heard of the Quin-Coco, but I heard nothing of the Mulford preparation.

XQ107. You have testified in chief as to the Homilia Club. Was not that club to a certain extent organized for the purpose of regulating what you considered undue competition among members and in the trade, and the imitation of products and specialties and properties of one house by another?

A. It was not for the purpose of regulating competition in the trade along ordinary commercial lines. It had, as you stated, as one of its principal objects, a cultivation of fair business methods regarding the competition of specialties and certain items.

XQ108. I understand the mischief you sought in this Club to remedy was the copying in one house of the products of another house in what seemed considered an unfair way, is that correct?

A. That is true, one of the objects.

XQ109. How many years did it last, approximately?

A. Seven or eight years—until the National Association of Manufacturers of Medicinal Products was formed.

XQ110. It was not very active in its later declining years, was it?

A. No; the objects had been largely secured through the registration system.

XQ111. I understood you to say that by common consent you did not persist in applying your registration system to the products of one house which had

been imitated by another house prior to the organization of the Club?

A. That is true. At the same time, it was the declared policy that such efforts would not be increased, and, in fact, should be reduced, which turned out to be the case.

XQ112. By efforts I suppose you mean imitations, do you not?

A. Yes. As an indication of what I have stated above, note in the little volume entitled "Fourth Issue, Adrenalin and Preparations" listed in Class A by Parke, Davis & Company, it is well known these items are thoroughly covered by patents and indicate that such items even were thrown into Class A along with other items established before the registration system was inaugurated.

XQ113. But if they were patented, they needed no protection?

A. No, sir.

XQ114. You have testified today as to Lilly & Company abandoning the marketing of Tritici, Lilly. When did you cease to market this product? Was it not after this suit was begun?

A. Yes, and occurred as the result of conversation had with Mr. Pfeiffer in which he indicated in this and some other items we were infringing upon his proprietary rights. While not acceding these, it has always been the policy of our house to accede to such reasonable requests by our competitors.

XQ115. Mr. G. A. Pfeiffer produced, when a witness in this case, copies of letters written to you. When he was on the stand, I called for the production of the originals of these letters if they were in your possession. Can you now produce those originals?

A. I can not.

XQ116. Have you made search for them?

A. We made a diligent search and cannot find them. I am perfectly willing to accept the copies, but we are unable to locate the originals.

Cross-examination Closed.

Re-direct-examination.

By Mr. Bradford:

RDQ117. Referring to several of the items in the Pfeiffer list on page 560, defendant's record, you spoke of the exploitation of these items by the houses named in the second column as probably resulting in an enlargement of the demand. This, I take it, means that similar preparations were already on the market, and that there was a demand for such preparations prior to the time when the preparations under these particular names were advertised by the parties named. Is that correct?

A. Yes. It has always been the policy of our house not to make these preparations mentioned in the third column until the demand became general, and manufacturers generally were making them.

RDQ118. In introducing your preparations to the profession, did you rely upon the demand created by your competitors, or did you seek by your sales methods to create a demand for your own preparations?

A. We rarely put any sales effort on these competitive preparations other than specialties, rather answering a demand than creating it.

RDQ119. This demand came to you in what way?

A. Merely in the course of business from druggists and physicians throughout the United States.

RDQ120. Referring to Catalogue, Part 2, in which you stated the heading might be more or less misleading, is this catalogue intended for use of the laity or merely for the salesmen and druggists?

A. For the use of salesmen, druggists and physicians.

RDQ121. Confined to such use, the title used would not probably be misunderstood, would it?

A. No.

RDQ122. What was the purpose of the list of competitive preparations which has been introduced for defendant's benefit?

A. It was for the information of our salesmen and detail men, when finding the trade or physicians using quantities of competing preparations we could present the merits of our preparations that were designed to fill the same needs. In no case were these preparations intended as substitutes, as clearly indicated at the heading of the list in question.

RDQ123. Why was it discontinued?

A. If my memory serves me right, it was discontinued for the reason our men paid too much attention to this list and took their efforts from other and more important products.

RDQ124. May it be true that specialties can be designated by peculiar physical appearance as well as by distinctive names and original formulas?

A. Yes, that is not an uncommon method of giving the preparation some distinction to take it out of the ordinary line of pharmaceutical preparations.

Re-direct-examination closed.

Re-cross-examination.

By Mr. Rawle (without waiving objections):

RXQ125. You said that you did not sell certain competing preparations as substitutes, but would it not have been possible for a druggist to have bought them to use in place of the similar product of other houses?

A. Not as a general rule. A very few of the ordinary kind have the same appearance, such as Petronol, Lilly, not being a manufactured product, has the same appearance as Albolene. It is a natural mineral oil. But in very few instances are the physical properties of such nature that they could be used in deliberate substitution. No effort was made to make our preparations so that they could be substituted.

RXQ126. But after all, is not the question of deliberate and dishonest substitution by retail druggists on a prescription, or over the counter, a mere matter of honesty of that particular druggist, in the long run?

A. Not altogether. It is a question of his honesty in the main, but of course he must have the weapons to use in order to substitute one preparation for another formula. In other words, the preparation must so closely resemble the original that he could use it to deceive. This is where the manufacturer has some responsibility.

RXQ127. But the honest druggist does not use the weapon, does he?

A. No.

Re-cross-examination Closed.

Deposition Closed.

JOSIAH K. LILLY.

CERTIFICATE.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 1355.

THE ELI LILLY AND COMPANY, a corporation,

vs.

WM. R. WARNER & COMPANY, a corporation.

STATE OF INDIANA,
COUNTY OF MARION. } *ss.*

I, A. C. Rice, a Notary Public in and for the County of Marion and State of Indiana, DO HEREBY CER-

TIFY: That, pursuant to notice and agreement of counsel, I was attended at the office of Bradford & Doolittle, 1104-5 Fletcher Savings & Trust Building, in the City of Indianapolis, and State of Indiana, by E. W. Bradford, Esq., on behalf of complainant and Francis Rawle, Esq., counsel for defendant, on the days and dates hereinbefore stated; that the forenamed witnesses, Frank E. Green, C. J. Thurman, Francis E. Bibbins, John E. McCambridge, Sr., John E. McCambridge, Jr., Charles J. Lynn and Josiah K. Lilly; who were of sound mind and lawful age, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in the above entitled cause, and that they thereupon testified as is above shown; that the depositions by the witnesses Francis E. Bibbins, John E. McCambridge, Sr., John E. McCambridge, Jr., Charles J. Lynn and Josiah K. Lilly, subscribed as above set forth, were taken down stenographically by N. E. Metcalf and reduced to writing by him under my direction; that the depositions by the witnesses C. J. Thurman and Frank E. Green, subscribed as above set forth, were taken down stenographically by myself and reduced to writing by me and said depositions were read over by the said witnesses and subscribed by them, and that all was so done at the place above specified and at the times set forth, and that said depositions were written and signed in the presence of myself and counsel for complainant, with the exception of the depositions of John E. McCambridge, Sr., and John E. McCambridge, Jr., which by consent of counsel were sent to the respective witnesses for signature and were signed by them.

I FURTHER CERTIFY THAT each of the above witnesses resides at a place more than one hundred miles from the place of the trial of this cause.

I FURTHER CERTIFY THAT the exhibits as cited, were offered in evidence and marked by me as specifically noted in the foregoing depositions and that

the said exhibits thus noted and marked have, pursuant to a stipulation by counsel for the respective parties, been delivered to counsel for complainant to be retained and produced in accordance with the stipulation in that behalf contained.

I FURTHER CERTIFY THAT I am neither attorney or counsel for any of the parties in said deposition or caption named, and am in no wise interested in the result of said cause.

WITNESS MY HAND AND OFFICIAL SEAL at Indianapolis, in the State of Indiana, this 26th day of December, 1916.

A. C. Rice,
Notary Public,
(Seal) Marion County Indiana.
My commission expires June 3, 1920.

IN THE
DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

No. 1355. December Term 1914.

IN EQUITY.

THE ELI LILLY AND COMPANY, a corporation,
Plaintiff,

vs.

WM. R. WARNER & COMPANY, a corporation,
Defendant.

DEPOSITIONS OF WITNESSES, IN REBUTTAL, ON BEHALF OF PLAINTIFF.

Washington, D. C., January 15, 1917—11 a. m.

Met pursuant to notice and agreement of counsel.

Present:

MR. E. W. BRADFORD, on behalf of plaintiff, and
MR. FRANCIS RAWLE, on behalf of defendant.

RALPH E. MCCORKLE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Ralph E. McCorkle; age 25; Atlanta, Georgia;

retail druggist; a partner in firm of Atkins Park Pharmacy, 854 Highland Avenue, Atlanta, Georgia. I have been a retail druggist for three years.

Q2. Has any drug salesman at any time endeavored to sell you a preparation called Quin-Coco, and if so, will you relate the circumstances, stating when the incident occurred, who the salesman was, and what he said to you on the subject?

By Mr. Rawle: Objected to as not proper for rebuttal.

A. Mr. Jack Wilson, a salesman for Wm. R. Warner & Company, was in my store the first part of December, 1916, and offered Quin-Coco as a substitute for Coco-Quinine, stating that it had the same appearance and the same formula as Coco-Quinine. He offered it at about the half price of Coco-Quinine. He said it could be used for Coco-Quinine, to fill calls for Coco-Quinine, to be used as a substitute for it. That is about all about Quin-Coco. He had several other preparations I could tell you about that he offered as substitutes.

By Mr. Rawle: Objected to because inferences and not facts are stated.

Q3. What other preparations?

By Mr. Rawle: Objected to as not rebuttal and as irrelevant.

A. Fluid viburnum as a substitute for Hayden's Viburnum Compound, and also Glycerole Thymol as a substitute for Glyco-Thymoline, and also A. B. S. & I. pills as a substitute for lapactic pills, Sharpe & Dohme. In fact, his chief talk in selling his pharmaceuticals was that they were offered as substitutes for other preparations recognized as standards.

Q4. With what Lilly man have you talked about this case and when?

A. Mr. W. R. Bell, the Lilly representative at Atlanta, on two or three occasions, the first time about

the first of this month, and probably two or three times since.

Q5. What did Mr. Bell promise in reference to your expenses or other compensation for coming to Washington to testify?

A. That my expenses were to be paid and pay for any time necessarily lost.

(Direct-examination closed.)

Cross-examination.

By Mr. Rawle, without waiver of objections, and now giving notice of motion to strike out the deposition for reasons given:

XQ6. When did you reach Washington and when do you expect to leave Washington on your return provided you finish your testimony by 1 o'clock?

A. Last night about 10.30, and I expect to leave at once after I finish my testimony.

XQ7. Had you before the date mentioned ever had dealings with Jack Wilson, the Warner salesman?

A. Yes, sir.

XQ8. For how long a period before then?

A. About six months.

XQ9. How many calls had he made on you at which you were present?

A. About three.

XQ10. How many calls since the one you have referred to?

A. None.

XQ11. At the call that you have mentioned were you doing the buying or your partner, or both?

A. I was doing the buying, by myself.

XQ12. How long did the interview last at that time?

A. About an hour.

XQ13. What time of the day?

A. About twelve o'clock.

XQ14. Was the talk between you sometimes interrupted by other matters coming in?

A. Yes, sir.

XQ15. Quite frequently?

A. No.

XQ16. Did he go over his entire line of Warner and Pfeiffer and Searle and Hereth perfumery goods, with you?

A. Not all of them.

XQ17. Did he go over a large part of them?

A. Yes, sir.

XQ18. When he offered you Fluid Viburnum, did he say that it was the same thing or similar to Hayden's Viburnum Compound, or words to that effect?

A. Yes.

XQ19. And is that substantially what he said about those two preparations?

A. Yes, sir.

XQ20. I mean is that substantially all that he said about those two preparations?

A. No, sir.

XQ21. What else did he say? Please give his exact words?

A. Well, I can not give his exact words, but about what he said.

XQ22. State his words as near as you can?

A. He stated that it was the same formula and that it came up to the requirements that Hayden's Viburnum Compound is.

XQ23. Have you now stated substantially all that he stated about the Viburnum?

A. He offered as an inducement to buy this article a much cheaper price.

XQ24. Have you now stated all that he said about the Viburnum in comparison with the Hayden Viburnum?

A. Yes, and what I have told before as to what was said about it.

XQ25. It is my right on cross-examination to ask

you to restate just what Wilson said to you. I shall have to ask you again to state the substance and as near as you can the exact words used at this interview regarding Viburnum?

A. He asked if we carried Hayden's Viburnum Compound and was told yes. He showed me a label of Fluid Viburnum and stated it was the same thing at a cheaper price.

XQ26. When he showed you the Viburnum label was it pasted in a blank book somewhat like the one I now show you?

A. I can not say definitely whether it was exactly like that or not.

XQ27. When he was offering you his various items did he use a blank book with the labels pasted in substantially like the one I am showing you?

A. Yes.

XQ28. And did he run through the successive pages and call your attention to some or many of the labels as he turned the pages over?

By Mr. Bradford: Objected to as immaterial and not cross-examination, and this applies also to the last previous question.

A. Yes.

XQ29. Give me an idea of about how many pharmaceuticals in his line he called your attention to and offered to sell you?

A. I can not give an idea about the number he mentioned to me.

XQ30. Were there as many as fifty or more than a hundred pharmaceuticals?

A. Possibly fifty or more.

XQ31. How long did he talk about each of them?

A. I do not recall.

XQ32. On an average as much as half a minute?

A. More.

XQ33. Had you never bought any of his line before?

A. Yes.

XQ34. Were you not familiar at that time with his pharmaceutical line more or less?

A. No.

XQ35. Not at all, did not carry any of them.

A. No.

XQ36. If the entire interview lasted only an hour and was sometimes interrupted how could you give a minutes to each of fifty or more pharmaceuticals and besides that go over his whole line more or less?

A. I did not state the exact time that the interview took place. It may have lasted longer than I have stated.

XQ37. How much time did you consume on Quin-Coco?

A. A short while.

XQ38. More or less than a minute?

A. Yes, more than a minute.

XQ39. And Wilson told you that Quin-Coco was just like Lilly's Coco-Quinine, did he?

A. Yes.

XQ40. And did he say it was cheaper?

A. Yes, sir.

XQ41. Now please state just what he said about Quin-Coco?

A. He asked if I carried Coco-Quinine and I said yes. He said I have it in Quin-Coco, being the same stuff under a different name.

XQ42. Go ahead.

A. That is about all I can recall.

XQ43. I take it that you knew that he was a Warner salesmen, did you not, and not a Lilly salesman?

A. Yes.

XQ44. Did he show you the Quin-Coco label in his blank book?

A. Yes.

Cross-examination closed.

Re-direct-examination.

By MR. BRADFORD:

RDQ45. Did he tell you how you could dispense his preparation Quin-Coco and if he did what did he say?

By MR. RAWLE: Objected to as leading and as an improper question to ask the witness on re-direct-examination after he has been fully examined in chief and cross-examined and after he has stated that he had given all that was said by the salesman at that interview.

A. He stated it was the same stuff as Coco-Quinine.

RDQ46. Did he tell you that in selling it or dispensing it you should use a label similar to the one he showed you in his book and sell it under such a label?

By MR. RAWLE: Objected to as leading and because the witness has already stated on his cross-examination all that was said by the Warner salesman at the interview and that it is therefore improper to push the witness any further.

Mr. Bradford here shows the witness the blank book with labels pasted in it, produced by Mr. Rawle.

A. No.

RDQ47. How did you understand from what he did say to you that he intended you to sell his preparation if you bought it?

By MR. RAWLE: Objected to for the same reasons and because the witness' understanding is not evidence, but only the witness' statement of what the salesman said to him.

A. As a substitute for Coco-Quinine.

RDQ48. Is Mr. Wilson a comparatively new man in that territory?

A. Yes.

RDQ49. How long so far as you know has he been representing Wm. R. Warner & Co., in that territory?

A. To my own knowledge about eight months. I mean that is about the time that he called on me first, about eight months ago.

RDQ50. Who was the Warner representative in that territory before Wilson?

A. I think it was Mr. Nottingham, I am not positive.

Re-direct-examination closed.

Re-cross-examination.

By Mr. Rawle:

RXQ51. State what words he used which gave you to understand "that he intended you to sell his preparation" in the way you have mentioned?

A. I understood it by him stating that it had the same appearance and was the same formula as Coco-Quinine.

Deposition Closed.

Ralph E. McCorkle.

L. S. James, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. L. S. James; age 27; Atlanta, Georgia; retail druggist. I have an interest in the store of Marshall and Pendegrast, located at 156 North Moreland Avenue, Atlanta, Ga. I have been a retail druggist for seven years.

Q2. Has any drug salesman at any time endeavored to sell you a preparation called Quin-Coco, and if

so, will you relate the circumstances, stating when the incident occurred, who the salesman was, and what he said to you on the subject?

By Mr. Rawle: Objected to as not proper for rebuttal, the subject matter constituting an essential part of the plaintiff's *prima facie* case and having fully been gone into there.

A. Yes, sir. Mr. Wilson was his name, a salesman for Wm. R. Warner & Co. He called on us about the 20th of May, 1916. He came in with his samples as usual. He asked us if we sold Lilly's Coco-Quinine. I told him we did. He said, "Well, I have it." He reached in his sample case and pulled out a little sample. He said I have it at about the half the price you pay for Lilly's. He shook the bottle and said "You can't tell it from Lilly's." The next thing he asked me if we sold lapactic pills. I told him we did. He showed me a sample from his case and said that he had them for which we could get them at a great deal less price than Sharp and Dohme's. Next he asked me if we sold Hayden's Viburnum Compound. I told him we did. He said he had the identical Hayden's at a much less price than we had to pay for Hayden's Viburnum Compound. He also said that the Hayden's Viburnum people had had a suit against them and that they had won out in the case and had found his preparation to be identical with theirs. He also stated that he had a cod liver oil preparation similar to Wampole's and better.

By Mr. Rawle: The answer is also objected to in so far as it is volunteered.

Q3. Did he say anything respecting how you should or could dispense his preparation Quin-Coco if you bought it. If so, what did he say?

By Mr. Rawle: Same objection and because the question is leading, the only proper question being as to what was said.

A. He said that we could dispense it on orders for Lilly's Coco-Quinine, either on prescriptions or over the counter.

Q4. How long has Mr. Wilson been representing Wm. R. Warner & Co., in the Atlanta territory, so far as you know?

A. About twelve months to my knowledge.

Q4. Do you remember who had the territory before Wilson, I mean, as the Warner representative or salesman?

A. Mr. Nottingham, I think.

Q6. Who asked you to come here to testify today?

A. Mr. W. R. Bell, the Atlanta representative of Lilly.

Q7. When did you first talk with Mr. Bell on the subject of testifying in this case?

A. It was just after Mr. Wilson had been around to see us, about a month after, about June 1916.

Q8. When did Mr. Bell first ask you if you would come up here to testify?

A. About two or three weeks ago.

Q9. How many times have you talked with him about what Wilson said to you on this subject?

A. About two or three times.

Q10. What did Mr. Bell promise you respecting what you should receive if you came up here in the way of compensation or expenses?

A. He said that my expenses would be paid and that I would be paid for my time I lost from my business.

Direct-examination Closed.

Cross-examination.

By Mr. Rawle, without waiver of objections:

XQ11. What other pharmaceuticals besides Lapactic Pills and Hayden's Viburnum did he call your especial attention to as you say he did to those two items?

A. There were a number that he tried to sell, the

general Warner line; Lithia tablets, Glycerine Tonic, Sloan's Liniment.

XQ12. Were they all goods that were competitive with similar goods of other makers?

A. All makers make similar pharmaceuticals; some have specialties.

XQ13. State all that he said to you about his pills that were just like lapactic pills, S. & D.

A. He said that we might sell them on orders for lapactic pills; also that they would cost us about half as much as lapactic pills, and that we could tell no difference in them.

XQ14. Did you buy any of his pharmaceuticals?

A. Yes.

XQ15. Do you believe that it is honest in the drug business, when a pharmaceutical of one house is specifically called for to dispense a similar pharmaceutical of another house, without saying anything about it, either to a customer or on a prescription?

A. I do not.

XQ16. And you would not like to have it known that your drug store did that sort of thing, would you?

A. No, sir; we don't practice it.

XQ17. Then if Wilson made any suggestion to you that you should do such a dishonest thing, how did you show him that you resented the suggestion?

A. I just told him we did not care for it.

XQ18. By "it" did you mean the particular item he was then talking about?

A. I meant all the items that he offered.

XQ19. I thought you said that you bought some of his items and that they were competitive goods?

A. We bought Cod Liver Oil and Glycerine Tonic. We have a number of calls daily for cod liver oils.

XQ20. And the Warner Cod Liver Oil was similar to some other make, was it not?

A. That is what Wilson said.

XQ21. And as to Glycerine Tonic there were similar preparations of other houses were there not?

A. I think that all pharmaceutical houses make a glycerine tonic.

XQ22. And perhaps Wilson told you that his glycerine tonic was similar to the preparation of other houses?

A. I don't know whether he said it was similar to that of other houses, but that he had a good glycerine tonic compound.

XQ23. And did not other houses market a glycerine tonic preparation?

A. Yes, and they have different names for them. Some are glycerinated gentian and some call them gentian and glycerine and some glycerine and gentian.

XQ24. How long did the entire interview last?

A. About thirty minutes.

XQ25. Were there interruptions during the interview?

A. None.

XQ26. In those thirty minutes did he go over his entire line of pharmaceuticals, pills, and elixirs, specialties, &c.?

A. I have not noticed of what his entire line consists of, but I don't think he could go over them in thirty minutes.

XQ27. Did he have a blank book with his labels pasted in it like the one I hand you and did he work from that turning over the pages with the reading matter facing toward you across the counter?

By Mr. Bradford: Objected to as immaterial.

A. He had a similar book and also had a sample case containing many articles. Yes, he worked from both the label book and the sample case.

XQ28. How much time did he spend in talking about lapactic pills and his similar preparation?

A. I should say five minutes, not more than that.

XQ29. How long did he spend on his viburnum preparation similar to Hayden's?

A. Not over five minutes.

XQ30. How long did he spend on his cod liver oil and glycerine tonic respectively?

A. Not over five minutes each.

XQ31. How long did he spend over Quin-Coco? He now has left only ten minutes for the rest of his line, including Quin-Coco?

A. About the same.

XQ32. Did he take up his perfumery line?

A. No, sir.

XQ33. Did he take up Sloan's Liniment?

A. He asked if we needed any.

XQ34. How long did he spend on that?

A. About one minute.

XQ35. Did he call your attention to and offer to sell you as many as a hundred different items?

A. No, sir.

XQ36. How many approximately?

A. About four or five.

XQ37. Didn't he turn over the pages of his label book?

A. Part of it.

XQ38. Did he tell you that his Quin-Coco was a similar preparation to Lilly's Coco-Quinine?

A. Yes, and that it could be dispensed on orders for Coco-Quinine.

XQ39. Give the exact words that he used?

A. You mean in regard to Coco-Quinine or Quin-Coco?

XQ40. State the exact words that he used in trying to sell you his Quin-Coco? State the entire conversation on that particular preparation?

A. First he asked if we sold Lilly's Coco-Quinine. I told him we did. He said, "I have it", and reached into his sample case and brought out a sample that looked very much like Coco-Quinine, and that it would cost us about half as much as Lilly's Coco-Quinine.

XQ41. Have you now stated all that he said about it? If not, please proceed?

A. I think that is all.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ42. Do you mean by your last answer that that answer contains all that Wilson said to you on this subject, or that your previous answers contain the whole story?

By Mr. Rawle: Objected to as leading and as improper for re-direct-examination, the witness having been fully examined and cross-examined.

A. I meant that what he said on the last answer and on the first answers is all that he said to me. I meant the last answer and all that I have said before.

Re-direct-examination closed.

Deposition closed.

L. S. James.

George Martin, a witness called by and on behalf of the plaintiff having been first duly sworn, deposes and says as follows:

By Mr. Bradford:

Q1. Are you the same George Martin who has heretofore testified on behalf of plaintiff in this case?

A. I am.

Q2. After the conclusion of your deposition previously given in this case you mentioned in a conversation with me that Mr. Harry Fritch had had a conversation with you on the Friday evening previous at your home in Philadelphia on the general subject concerning which you were interrogated. Will you please relate the circumstances of Mr. Fritch's call on you and the substance of what was said to you by him on that occasion?

A. On Friday night previous to my giving testimony Mr. Fritch called at my house and said to me, this is as near as I can remember, "I have called either

to refresh your memory or to see how far back your memory goes." He then told me how I was brought into the case by his testimony, going over the circumstances in connection with his experiments with Coco-Quinine. I told him at the time that I was not positive that I did or that I did not bring this subject up and he related certain circumstances in connection with the experiments which I do not recall, while I might have been instrumental or the cause of having the experiments made. I do not know. As far as I can remember there was nothing said at that time with reference to my being a witness in this case.

Q3. And you told him then that you could not recollect the circumstances which he endeavored to recall to your mind?

By Mr. Rawle: Objected to as leading and as not merely asking for what was said.

A. I did.

Q4. Has Mr. Fritch been a frequent caller at your home in recent years?

A. This makes the second visit in eight years. He called shortly after I left the Warner people about eight years ago, and his next call was the call I have just testified about.

Direct-examination closed.

Cross-examination.

By Mr. Rawle, without waiver of objections:

XQ5. Do you remember that Fritch did make some experiments on a tasteless quinine preparation before the Pfeiffers came to Philadelphia, which you have said was July, 1908?

By Mr. Bradford: Objected to as not cross-examination, as improper and irrelevant.

A. No, I don't remember any experiments that were made on Coco-Quinine or chocolate quinine.

XQ6. Do you know of any that were made after the Pfeiffers came to Philadelphia, in July, 1908?

Same objections.

A. No, I don't know of any experiments being made then. In fact it is hardly likely they would make any experiments then because the Pfeiffers brought their preparations with them.

XQ7. What person connected with the Lilly company first talked with you about this case?

A. Mr. Smith and Mr. Grove both called on me, may be six months or a year ago, I don't remember when it was. As far as I can remember it was last Spring some time. Mr. Smith is the Lilly representative in Philadelphia and Mr. Grove is a salesman under Mr. Smith.

XQ8. How often have you seen either Smith or Grove?

A. I think I have seen Mr. Smith twice and Mr. Grove once after he called on me originally in reference to coming to Washington as a witness.

XQ9. You mean that you originally saw Groves last Spring?

A. Yes, he and Smith called to see me together.

XQ10. And talked to you about this case?

A. Yes.

XQ11. Then just before you came to Washington to testify Groves called again?

A. Yes.

XQ12. And was not Groves here in Mr. Bradford's office the day you testified in this case?

A. Yes.

XQ13. Did he come down here with you on the train?

A. Yes.

XQ14. Who arranged for your coming down here today?

A. Mr. Bradford; by letter.

XQ15. Expenses and compensation paid by plaintiff?

A. I judge so.

XQ16. You used to work for Smith, Kline & French?

Objected to as immaterial and irrelevant and not cross-examination.

A. Never.

By Mr. Rawle: Objection is made to the entire deposition as not rebuttal, the entire matter having been gone into on the *prima facie* case by Groves and on the defendant's case by Fritch, and as irrelevant.

Deposition closed.

Geo. Martin.

By Mr. Bradford: Counsel for plaintiff states that after the conclusion of the witness' former testimony counsel for defendant said to him that he had neglected to ask the witness what Lilly men he had been talking with about this case and that he would like to ask him a question or two on this subject. Counsel for plaintiff readily acquiesced and added that he would like also to ask him what Warner men had been talking with him about the case and explained that the fact that Mr. Fritch called had come to his knowledge since the witness' deposition was closed. Thereupon counsel for defendant replied after consultation with Mr. Fritch, who was with him, that we need not bother about recalling the witness, that we could put the facts in by stipulation. The witness has been recalled because of the difficulty in reaching an agreement by stipulation.

By Mr. Rawle: Defendant's counsel deems it hardly necessary to say upon the record that, until after Martin deposition was closed and the meeting adjourned, he had no knowledge that

Fritch had called on Martin, and he further states professionally that his clients had no knowledge of the fact until he, counsel, disclosed it to them some days after the meeting.

By Mr. Bradford: Counsel for plaintiff states to counsel for defendant that Mr. Charles J. Lynn, General Manager of the plaintiff corporation, left Indianapolis yesterday on a train due in Washington at 8.46 this morning; that just before noon he received a telegram from Mr. Lynn dated at Harrisburg, Pa., stating that the train was then four hours late. It is now 3.30 and nothing further has been heard from him. Counsel for plaintiff expected to recall Mr. Lynn for the purpose of asking him some additional questions.

By Mr. Rawle: Defendant's counsel being obliged to leave Washington on the 4 o'clock train, after an explanation by counsel for plaintiff as to the additional evidence intended to be offered by Mr. Lynn's proposed deposition, stipulates, but subject to objection to the evidence, as follows:

That, if Mr. Lynn were present, he would testify that some months ago, Fairchild Brothers and Foster adopted the name "PEPSENCIA" as a coined or trade name for their product Essence of Pepsin, and that such product has been marketed under such name since that time, the exact date not being known to him.

Further, that in reference to the samples of experiments introduced in the Bibbins deposition, the same have been examined since the date of his deposition in Indianapolis (November 29, 1916) and that Numbers 7, 8, 9 and 10 have been found to have acquired a more or less (some more and some less) bitter taste, showing that further pharmaceutical experimentation is necessary to perfect these specific samples before they can be offered as commercial products, but that others particu-

larly those numbered 2, 4, 5 and 6, are found to be in perfect condition, thus proving to his satisfaction that they are already perfect pharmaceutically, and in condition to be offered as commercial products; that this is the first time these preparations have been examined, except as to "suspension" characteristics (which could be observed through the parchment wrapper) since they were made in March, 1916, when the bottles containing them were sealed with transparent parchment wrappers and placed on shelves in the laboratory of Eli Lilly and Company in Indianapolis; that the above mentioned recent examination was made from portions of the same lots made up in March, 1916, and part of which were bottled, kept and introduced in evidence as said exhibits during the taking of said Bibbins' deposition as aforesaid; and, further, that it is nearly always necessary to subject new pharmaceutical preparations of the general character of the one in question to time tests before it can be known definitely whether or not they will keep perfect for long periods, but that in making the experiments in question, the only purpose in mind was to show that the preparation can be made of a large variety of colors and flavors and yet of a character to hold the quinine crystals in suspension; that the suspension mediums used in the various experiments submitted are still thought to be entirely satisfactory for that purpose, and that in addition to samples numbers 2, 4, 5 and 6, which are in perfect condition, samples numbers 1 and 3 are in a fair condition, and, while not as perfect as they should be, are from a pharmaceutical standpoint as good, or better, than the majority of the chocolate quinine preparations, samples of which have been introduced by defendant; and that the results of these ten experiments are far above the average inasmuch as the usual ex-

perience is that many experiments are required to produce a single success.

Further, that he would identify a letter received from counsel for plaintiff on December 9, 1916, as follows:

"December
Seventh
1 9 1 6.

Eli Lilly & Company,
Indianapolis, Ind.
ATTENTION: Mr. Chas. J. Lynn,
General Manager.

Dear Mr. Lynn:

When we took our testimony at Philadelphia, and introduced the old bottle of Coco-Quinine, which was formerly in the store of Mr. Watson of Bristol, the question arose as to how long this bottle had been in his store. He states that he had had it in his store for five or six years at least, and probably more.

In examining the bottle, Mr. Pfeiffer observed your serial number on the label and suggested that this would identify when the particular bottle was made. I agreed with Mr. Rawle that I would write you, giving you the serial number, and from this you could ascertain from your records when the bottle was actually made. It is on the small label on the back of the bottle headed 'NOTICE' containing the guarantee under the Food and Drugs Act. On the bottom of this label it is stated, 'This article was perfect when bottled, if not so when received, advise us, giving the following

No. 42:1191—14786'

Will you kindly have this matter investigated and advise me what the facts, respecting this matter, are, so far as they can be ascertained from your records?

Yours very truly,
(Signed) E. W. Bradford."

Further, that he would identify his reply to said letter, written on December 9, 1916, as follows:

"December 9, 1916.

Mr. E. W. Bradford,
Washington, D. C.

Dear Mr. Bradford:

Answering your inquiry of December 7th, our records show that Coco-Quinine lot #14786 was made November 14, 1908.

I might explain to you that the number following the dash is the mark of identification for the particular lot of product, while the numbers preceding are the bottler and bottling numbers.

Very truly yours,
ELI LILLY AND COMPANY
(Signed) Chas. J. Lynn,
Secretary and General Manager."

By Mr. Rawle: This stipulation is made subject to an objection to that part of the stipulated evidence relating to the 10 Bibbins' samples as not proper for rebuttal and also because Lynn is not an expert and because Lynn does not appear to have seen or examined the samples of chocolate quinine preparations made by competitors; and also to that part relating to the act of Fairchild Brothers and Foster as irrelevant. Notice is also given of a motion to strike the stipulated evidence from the record and that counsel for defendant will at the proper time after plaintiff's rebuttal is finally closed ask leave of the court to produce in evidence the results of an expert examination of the 10 Bibbins samples.

By Mr. Bradford: Counsel for plaintiff notifies counsel for defendant, this 9th day of February, 1917, as he has notified him previously by letter, that Mr. Charles J. Lynn was in his office when

he returned there from the Examiner's office immediately following the close of the depositions on January 15, 1917; that he has submitted the stipulation appended to said depositions to witness Lynn, who has carefully read and approved the same. Also, that plaintiff's testimony in rebuttal is now closed.

IN THE
DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

No. 1355. December Term, 1914.

IN EQUITY.

THE ELI LILLY AND COMPANY, a corporation,
Plaintiff,

vs.

WM. R. WARNER & COMPANY, a corporation,
Defendant.

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON. } *ss.*

I, Charles E. Riordon, a Notary Public within and for the District of Columbia, duly appointed Special Examiner by order of Court of record in this cause, do hereby certify that the foregoing depositions of Ralph E. McCorkle, of Atlanta, Ga., L. S. James, of Atlanta, Ga., and George Martin, of Philadelphia, Pa., witnesses

on behalf of plaintiff, in the above entitled cause, were taken before me pursuant to notice and agreement of counsel, at my offices in the Washington Loan & Trust Building, Washington, D. C., on Monday, January 15, 1917, commencing at eleven a. m., and concluding the afternoon of the same day; that each of said witnesses was by me first duly sworn in accordance with law, before the commencement of his testimony; that the testimony of said witnesses was reduced to writing by myself upon a typewriting machine from the dictation of said witnesses; that the examination of said witnesses was conducted by Mr. E. W. Bradford, attorney for plaintiff, and by Mr. Francis Rawle, attorney for defendant, as appears in the record; that the deposition of each of said witnesses was read over and signed by him in my presence; that I am not of counsel or attorney or connected by blood or marriage with either party to this cause and that I am not interested directly or indirectly in the matter in controversy or in the result of this suit.

In testimony whereof I have hereunto set my hand and seal this 15th day of January, 1917.

CHARLES E. RIORDON,
(Seal) *Special Examiner.*

IN THE

District Court of the United States,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

December Term, 1914. No. 1355.

THE ELI LILLY AND COMPANY,
Plaintiff,

vs.

WM. R. WARNER & COMPANY,
Defendant.

ORDER OF COURT.

Before THOMPSON, *J.*

Upon hearing the motion of defendant for leave to introduce sur-rebuttal testimony, on the first day of May, 1917, and upon agreement of counsel, pursuant to the suggestion of the court and in order to relieve the court of the necessity of reading the testimony in the case at this time to decide the merits of the questions raised, it is ordered this 7th day of May, 1917:

That defendant may recall Dr. George M. Beringer, as a witness, to be examined respecting certain samples produced at the examination of Francis E. Bibbins, and offered in evidence by plaintiff following Q21 of Bibbins' testimony, page 1057, plaintiff's Printed Record, and respecting the testimony of said Bibbins.

That defendant may recall S. J. Hagaman, as a

witness, to be examined respecting the testimony of Charles S. Lebo and Samuel H. Bell, witnesses for plaintiff, relating to certain interviews and transactions between said Hagaman and said Bell; also respecting the testimony of Earl R. Peabody, another witness for plaintiff, relating to certain interviews and transactions between said Hagaman and said Peabody.

That defendant may recall Charles E. McNulty, as a witness, to be examined respecting the testimony of Earl R. Peabody, a witness for plaintiff, relating to certain interviews and transactions between said McNulty and Peabody; also respecting the testimony of Jesse N. Greene, another witness for plaintiff, relating to certain interviews and transactions between said McNulty and said Greene.

That defendant may recall S. J. Nottingham, as a witness, to be examined respecting the testimony of Francis M. King, a witness for plaintiff, relating to certain interviews and transactions between said Nottingham and said King.

That defendant may recall James W. Wilkins, as a witness, to be examined respecting the testimony of Elizie H. White and William G. Walker, witnesses for plaintiff, relating to certain interviews and transactions between said Wilkins and one John F. Whitley and themselves.

That defendant may recall B. F. Jones, as a witness, to be examined respecting the testimony of John W. Culver, a witness for plaintiff, relating to certain interviews and transactions between said Jones and said Culver; also respecting the testimony of John Moise, another witness for plaintiff, relating to certain interviews and transactions between said Jones and one Charles Heno.

That defendant may recall Clinton G. McCarthy, as a witness, to be examined respecting the testimony of John R. Stuckey, a witness for plaintiff, relating to certain interviews and transactions between said McCarthy and said Stuckey.

That defendant may recall Henry J. Ritayik, as a witness, to be examined respecting the testimony of John Moise, relating to certain interviews and transactions between said Ritayik and one Charles Heno.

That defendant may recall H. E. Starring, as a witness, to be examined respecting the testimony of William Heim, a witness for plaintiff, relating to certain interviews and transactions between said Starring and said Heim.

That defendant may recall Charles S. Rogers, as a witness, to be examined respecting the testimony of Martin A. Kessell, a witness for plaintiff, relating to certain interviews and transactions between said Rogers and said Kessell.

That John Wilson, a defendant salesman (not before a witness in the case) may be called as a witness by defendant to testify respecting the testimony of Ralph E. McCorkle and L. S. James, witnesses for plaintiff, the same as if said McCorkle and James had been examined as witnesses for plaintiff when taking its testimony in chief, with full scope for direct and cross-examination, as if said Wilson has been called as a witness for defendant when taking its original testimony.

That this order is made without prejudice to the right of plaintiff to object to the relevancy, pertinency, or competency of the evidence so to be introduced, and the determination of all questions raised by such objections at the final hearing, the same as if this order had not been made; also reserving to plaintiff the right to take testimony in re-rebuttal, to traverse, meet, explain, or confront, any new matter set up by defendant in its sur-rebuttal taken and introduced under this order; and that any testimony taken by defendant under this order must be closed forty-five days from the date hereof.

This order is made reserving to the defendant the right to urge at the final hearing any and all objections taken on the record to any part or parts of plaintiff's

testimony in rebuttal; and also its right to move to strike out any and all parts of plaintiff's rebuttal evidence as to which notice to strike out was given on the record.

So ordered.

BY THE COURT.

Attest:

GEORGE BRODBECK,
Deputy Clerk.

Agreed to:

E. W. BRADFORD,
Counsel for Plaintiff.

FRANCIS RAWLE,
Counsel for Defendant.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

December Term, 1914. No. 1355.

IN EQUITY.

THE ELI LILLY AND COMPANY, a corporation,
Plaintiff,

vs.

WM. R. WARNER & COMPANY, a corporation,
Defendant.

DEPOSITIONS OF WITNESSES FOR PLAINTIFF.

Washington, D. C., November 7, 1917.
2 p. m.

Depositions of witnesses on behalf of plaintiff taken before Charles E. Riordon, Special Examiner, at

the offices of said Charles E. Riordon, in the Washington Loan & Trust Bldg., Washington, D. C., commencing Wednesday, November 7, 1917, at 2 o'clock p. m.

Met pursuant to notice and agreement of counsel.

Present:

MR. E. W. BRADFORD, on behalf of plaintiff.

MR. FRANCIS RAWLE, on behalf of defendant.

SAMUEL H. BELL, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Are you the same Samuel H. Bell, who has heretofore testified in this case as a witness for the plaintiff?

A. I am.

Q2. Have you read the deposition of Mr. S. J. Hagaman, given on behalf of defendant in this case, under date of June 8, 1917, in Philadelphia?

A. I have.

Q3. In this deposition Mr. Hagaman denies a number of the statements made by you in your deposition on behalf of plaintiff, given in the city of New York on June 23, 1916. What have you to say in reference to these denials and the statements by Mr. Hagaman that in soliciting orders for items at your store he did not state that his articles as named would be good substitutes for corresponding articles of another house. I call your attention specially to his answer to Q24 as well as to the other parts of the deposition?

By MR. RAWLE: Defendant's counsel here notes his objection to the taking of any evidence

at this stage of the case, and gives notice of a motion to strike out the same with costs. The ground of the objection is that the evidence now sought to be taken all formed part of plaintiff's *prima facie* case, necessary to sustain the averments of the bill, the same being not after-discovered evidence and because this witness has already been sworn in the case,—plaintiff's Record, p. 661—and having then been examined specifically as to statements testified to by Hagaman, as to which statements it appears the witness is now being called again for the purpose of further examination, after he had already been fully examined on the same subject.

This objection is general to all the depositions and specific to this question and like questions.

By Mr. Bradford: It is agreed by counsel for plaintiff that the objection as above stated may stand as to each deposition taken on behalf of plaintiff until the conclusion of the additional testimony which it is proposed to take in re-rebuttal. These depositions are taken in accordance with the understanding of the scope and purpose of the Order of the Court, particularly the last paragraph of said order, made following defendant's motion for leave to introduce sur-rebuttal testimony on May 1, 1917.

A. I will repeat. That which I had said concerning the soliciting of orders by Mr. Hagaman is absolutely the truth. That was one of Mr. Hagaman's main arguments in soliciting orders, that I could substitute any of his articles which he was representing from the house of Wm. R. Warner & Co., against any other pharmaceutical house, to a like drug and article, and Mr. Hagaman speaks the untruth when he says that he did not refer to any other pharmaceutical house, and referring to question number 24 I will repeat the same as

to its being absolutely true. Right here I will say that Mr. Hagaman's conduct attending a salesman was so disgusting to me that on two or three occasions knowing him to be in the store while I was in my office and in order to avoid him I would go out the back way. He remained such a length of time that other business demanding my attention, prompted this move. I think I have given prior evidence of his entire method in soliciting. I don't think that, I know that I have, that his soliciting of all orders was based on substituting.

Q4. Mr. Hagaman testified that on his last visit to you, you told him that you were sick and tired of the drug business and that you thought that you would sell out. Is this true?

A. It is not. Mr. Hagaman and I never had a conversation along those lines.

Q5. I ask you to read Q31 and Mr. Hagaman's answer thereto and state whether or not Mr. Hagaman stated facts in said answer?

A. Mr. Hagaman's visits to my store were very obnoxious. That is why I did not give him an order. And much less did I say anything to him as to selling out attending the death of my wife and that I was all broken up. All such remarks are ridiculous on the part of Mr. Hagaman.

Q6. Are they true?

A. They are not true.

Q7. When was the last visit to you by Mr. Hagaman at your drug store in Reading?

A. It may be bordering on two years at this date.

Q8. Has he called on you since the time when you testified for plaintiff in New York?

A. He has not.

Direct-examination closed.

Cross-examination without waiver of objections.

By Mr. Rawle:

XQ9. When did you have that talk with Hagaman at your store?

A. What talk?

Q10. The talk which Mr. Hagaman testified to and as to which you have just testified to?

MR. BRADFORD: Objected to as the witness has not testified as to any special talk with Mr. Hagaman.

A. We did not have a talk.

XQ11. If you will pardon me for asking a question I will ask you whether it is true or not that at the time of one of these Hagaman calls on you your wife had recently died?

A. My wife died April 21, 1911, and I do not know of Mr. Hagaman being in my store closely following the death of my wife.

XQ12. What length of time would you indicate by "closely following"? Weeks or months or years?

A. That could best be referred to by Mr. Hagaman's own business diary.

XQ13. (Question repeated.)

A. I repeat my former answer.

XQ14. Are you unable to answer the question yourself?

A. I am, due to the fact that it may have been weeks, months or a year.

XQ15. You do not like Hagaman, do you?

A. I have no ill feelings against him. I have always treated him with business courtesy, but did not like his methods, suggested to me, in the purchasing of his line as a general substitute for other lines. And I consider the remarks of Mr. Hagaman attending the remarks I was to have made referring to my wife who had died that I would destroy my life. Those remarks I consider venomous from the lips of Mr. Hagaman, as life to me is too sweet.

XQ16. Did Hagaman solicit your trade on an A. B. S. & I. pill made by Warner?

A. He did.

XQ17. In testifying previously in this case (p. 652,

Q10) you said in effect that he told you that "their A. B. S. & I. pill would be a good pill to replace the Lapactic pill of Sharpe & Dohme." Was this testimony of yours true?

A. That is true.

XQ18. And you testified that "their elixir pepsin and caffeine comp. to replace Sharp & Dohme's panpeptic elixir". Is that true?

A. That was his mode of selling, yes.

XQ19. And was that his mode of selling other articles as you stated in answer to other questions on page 662?

A. To replace that article as a good substitute.

XQ20. Now I ask you specifically to recall an instance in which he was soliciting your trade on Warner's A. B. S. & I. or Warner's Elixir Pepsin and state the words which he used in soliciting your trade on those articles? I ask you to put no word in his mouth that you do not remember came out of it. I expect you to state what he said and not what inference you drew.

MR. BRADFORD: The question is objected to as entirely unwarranted both in form and substance, also in purpose; for the further reason that it is not cross-examination respecting anything the witness has testified to today, but is a mere continuation of the cross-examination fully developed at the time the witness was originally examined on June 23, 1916, in New York, and in fact the question is based upon testimony given at that time, and not upon testimony given today.

MR. RAWLE: Question withdrawn.

XQ21. Did Hagaman say to you that you could replace some of the competing articles with his corresponding article?

A. He said that I could substitute.

XQ22. How many times did he interview you at your store, soliciting your trade?

A. Mr. Hagaman may have been there possibly a dozen or more times.

XQ23. Can you give the exact words that he used at any one of these interviews?

A. As to his methods in soliciting orders?

XQ24. Yes.

A. Well I have already answered that. The soliciting of his orders was based along the line of substituting.

XQ25. Did he talk the same talk every time?

A. Every time along the same line; yes, sir. That was one of his chief characteristics.

XQ26. Did he talk the same kind of talk in regard to a good many of his articles which he urged you to buy?

A. I repeat my former answer to that.

XQ27. What was your former answer?

A. Regardless of the fact of what questions you may ask me, his motto was substitution.

XQ28. Along his entire competing lines?

A. It was. I would like to name some of the articles that I can recollect. I made a note of some of them, for example he urged me to buy Oriena to use in place of Azurea; Hobson's Hair Dye in place of Hambleton's Hair Dye; Hobson's Eczema Ointment in place of Cuticura Ointment; Derma Zema Soap in place of Cuticura Soap; Syrup of Figs in place of California Syrup of Figs; Castoria in place of Fletcher's Castoria; Triloids in place of Lilly's Diamond Antiseptic Tablets; A. B. S. & I. Pills Pill Peristaltic in place of Pill Laptactic S-D; and Elixir Pepsin and Caffeine Compound in place of Panpeptic Elixir S-D. Each of these articles Hagaman said that I could substitute for the originals named.

XQ29. But you just testified that Hagaman said to you that you could use each of those articles in place of the corresponding article and when you were testifying before you testified that he said that his articles could replace the competing articles. Which expression did he use?

A. Neither, that I could substitute.

XQ30. Can you add any other articles that he recommended to you in addition to the list that you have furnished, or state that there were a good many of them?

A. If I had their list I could.

XQ31. Can you without a list state that there were a good many of them that he recommended in the same way.

A. That just partly covers the list. He had Hobson's Rat and Roach Paste I recall very distinctly I could replace or substitute for Mauer's Rat and Roach Paste. Quin-Coco was one for Coco-Quinine.

XQ32. Who asked you to come here to testify today?

A. Mr. Bradford, by letter.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ33. In answer to XQ10 by Mr. Rawle, you said "We did not have a talk". Will you kindly explain this answer in view of your other testimony showing that you did talk with Mr. Hagaman when he was soliciting your orders?

A. Our conversation was only that pertaining to an order and nothing personal. That is what I meant.

Deposition closed.

Samuel H. Bell.

Ellis Walker Howard, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

had me compare them by placing one upon his handkerchief and the other upon mine. After quite a lengthy conversation he convinced me that they were identical and due to the fact that his preparation was offered at less than half the net cost of the other I purchased from him one eight ounce bottle of Garden Bouquet Extract. Next he called to my attention a preparation known as Oriana which he stated was the same thing as Azurea Extract. We then went into details as to other toilet preparations which he claimed were identical with preparations I carried in stock, of which I do not recall all these different preparations. I purchased also one eight ounce bottle of Orienna perfume along with some other extracts in his line sufficient to make what he called his best price shipment. We then, through Mr. Hagaman's suggestion, went into the prescription department and he in detail went through our stock and called my attention to a number of preparations and articles which we carried in stock bearing the manufacturer's name of which he could offer, as he stated, identical items and preparations at far better prices. The first of these called to my attention by Mr. Hagaman was a pill in appearance and by formula being identical with Parke Davis & Co., Alophen pills. Mr. Hagaman stated that a number of druggists on whom he called were buying these pills from Wm. R. Warner and using them both in prescriptions and in small retail quantities wherever Alophen pills was specified and called for. He then named over a number of other pills, one of which is known as Lapactic pills under the trade name Sharpe & Dohme, the formula being Alloin, Strychnine, Belladonna and Ipecac. Mr. Hagaman had with him a sample of these pills, poured some of them in my hand, then a few Lapactic pills, and asked me if I could tell the difference. I then gave him an order, as I best recollect, for one thousand of these pills. He then called to my attention a preparation, as he stated, I could buy cheap-

er and use as a substitute for a preparation put out by Sharpe & Dohme, known as Elixir Panpeptic. His preparation I believe he called Elixir Pepsin and Caffeine Compound. He then mentioned a preparation largely used by us and manufactured by Reed and Cornick, known as Elixir Peptenzyme. This attracted his attention because we used this preparation largely and bought it in five gallon quantities and at that time it was quite expensive, but due to the fact that the physicians prescribing this preparation were unusually familiar with it and as I told Mr. Hagaman I deemed it unwise to undertake to use any substitute for this preparation. He then mentioned several other preparations on our shelves among which was Coco-Quinine. He took this preparation up in detail and laid special stress upon its identity to a preparation of which he had a sample known as Quin-Coco. Mr. Hagaman told me repeatedly that druggists over his territory were using Quin-Coco very largely in substitution for Coco-Quinine and wherever Coco-Quinine was specified or called for. He took his sample of Quin-Coco and asked me to make comparison between it and Coco-Quinine and if I could tell any difference he would not ask me to buy any of his preparation but would make me a present of the best hat in town. He then mentioned taking an order for some of this preparation to be delivered in the fall with special dating as at that season preparations of this class were not in demand.

My purchases from Mr. Hagaman were composed of patent preparations and toilet articles mostly, possibly including a few pharmaceuticals, but I do not recall which ones or the quantity.

Q9. Was the young man who was with Mr. Hagaman at the time introduced to you?

A. Yes, sir.

Q10. Was his name Wilson?

A. I would not be positive that it was, but to my

with Mr. Nottingham was in the early fall of 1914, at Waycross, Georgia, while operating Howard's Pharmacy.

Q23. Nottingham, during the deposition before referred to, in answer to Q10 stated: "I never offered him or any one else Quin-Coco as a substitute for Coco-Quinine." Again, in answer to Q20, he said: "I never suggested to King or any other witness that he use Quin-Coco as a substitute for Coco-Quinine." What have you to say as to these statements?

Same objection.

A. As I stated before, I did not know anything as to the identity of Quin-Coco to Coco-Quinine until Mr. Nottingham called it to my attention, and he did state that it was identical and suggested that I use it as a substitute for Coco-Quinine, for the reason of a better price.

MR. RAWLE: The latter part of the answer is objected to, unless the witness states the language of Nottingham.

Q24. Do you know anything about a preparation put up by Wm. S. Merrill Company and called Choc-Quin, and the extent of its sales in North Georgia? If so, please state.

A. I do not recall ever having seen this preparation, and, in fact, I have been through the prescription department of a large per cent. of the retail druggists in North Georgia within the last few weeks, and none of them had this preparation in stock, nor did they mention it in their conversation with me, and, in fact, generally this preparation is not known nor is it offered as a rule by Merrill.

Q25. Do you know a druggist by the name of Louis Davis, of Temple, Georgia, and if so, can you give any reasons why he could not respond to our request to be here to testify to-day?

Objected to as irrelevant.

A. I was in Mr. Davis' store last Friday, at which time I knew nothing of this suit, or Mr. Davis being requested to come here to testify, but do know that Mr. Davis was drafted by the United States Army, and only a few days prior to my visit to him he obtained a discharge, and that during his absence his drug business was closed up, and, in fact, while I was there he closed his store to go to lunch and asked me if I knew of any druggist I could suggest to help him out, as he was in a tight place and had to have a man. He did not have any clerk, and his store was the only drug store in that community, and he had no ready means of obtaining the services of a relief man.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ26. Did Mr. Hagaman, in speaking of these articles in his line, tell you substantially that they were identical in formula or similar medicinally, or similar pharmaceutically, or what?

A. He emphatically stated that they were identical, and that I could safely use them wherever similar preparations were specified.

XQ27. As he went down his line of competing articles did he tell you the same thing in regard to each of them?

A. Some articles he did not lay special stress upon, but wherever he undertook to demonstrate the identity of these preparations he always stated that they were identical, and as I have stated he insisted that I could safely use them wherever similar preparations were specified.

XQ28. When Nottingham and Hagaman went through their lines did they work from a demonstration book having labels pasted in it?

Objected to as immaterial.

XQ37. When Mr. Hagaman called on you this year and solicited your order for his preparation to replace Coco-Quinine, and you said he took this preparation up in detail and laid special stress upon its identity with Quin-Coco, in what words did he do so?

A. Mr. Hagaman did not represent Quin-Coco as replacing Coco-Quinine, but as he represented it to me it was the same thing as Coco-Quinine, and as to the words he used he did not state anything regarding the ingredients of his preparation, but laid stress on and insisted that we make the demonstration. In fact, Mr. Hagaman went into quite a lengthy conversation with me regarding methods of using some of these substitutes where similar preparations were specified, and made me some suggestions along that line, one of which was that I did not have to leave some of such preparation where everybody could see them.

XQ38. He was trying to sell you various articles that were in competition with articles of other houses that you were carrying, was he not?

A. Mr. Hagaman took these articles one at a time and undertook to show me how and why I could use them in substitution of like preparations.

XQ39. Question repeated.

A. He represented them as being identical with other preparations.

XQ40. Can not you tell me whether or not Hagaman was trying to sell you Warner articles that were in competition with similar articles made by other houses which you had in stock?

A. He did not represent them so.

XQ41. Was he not trying to sell you competitive articles?

A. He did not represent them to me as being competitive articles, but in fact he led me to believe all the way through our interview that he could sell me a substitute for the preparation mentioned at better prices.

XQ42. That is about the substance of what he said to you, is it, boiled down?

A. I would not undertake to boil down Mr. Hagaman's conversation, as it covered a very broad field, and as I stated in the preceding question, he left the impression on me that he could sell me his substitute for better prices than I was paying.

XQ43. And is that the impression that Nottingham left on you?

A. Mr. Nottingham was the first man that brought to my attention that Coco-Quinine had a substitute, and he certainly left that impression with me.

Deposition closed.

E. W. HOWARD.

R. H. GREENE, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Are you the same R. H. Greene who has previously testified in this case on behalf of the plaintiff?

A. I am.

Q2. Do you know a Mr. Wilson, John Fielding Wilson, Jr., a traveling salesman for Wm. R. Warner & Co.?

A. Yes, sir.

Q3. What is your present employment?

A. Owner and proprietor of Greene's Pharmacy, Fairburn, Georgia.

Q4. In answer to XQ80 in a deposition on behalf of defendant by Mr. Wilson on July 5, 1917, he testified: "I do not suggest substitution." Substantially the same statement was made by Mr. Wilson in answers to a number of other questions. Are there any facts within your knowledge bearing upon this matter, and if so, will you please relate them?

MR. RAWLE: Objected to because the matter inquired of forms part of the plaintiff's *prima*

facie case, and the evidence is inadmissible at this stage. Notice is given of motion to strike out, with costs.

A. There are. In two perfumes, namely Marv Garden and Azurea, to use for them Garden Bouquet and Oriena.

Q5. What do you mean by this answer?

A. I mean that I was offered Garden Bouquet and Oriena as a substitute for Mary Garden and Azurea.

Q6. By whom?

A. By Mr. Wilson.

Q7. When?

A. It was sometime within this last summer.

Q8. What part of the summer?

A. The latter part.

Q9. Where?

A. At Fairburn, Georgia.

Q10. What did Mr. Wilson say to you when he offered you Garden Bouquet perfume?

A. Here is a real imitation of Mary Garden that is much less in price.

Q11. Did he make any demonstration or use any other argument to induce you to buy, and if so, will you please explain?

Objected to as leading.

A. No.

Q12. What did he say to you when he offered you Oriena?

A. About the same as he did when he offered me Mary Garden, with the exception of showing me a sample on his handkerchief to smell.

Q13. What did he say that Oriena was a substitute for or imitation of?

The question is objected to as leading and grossly improper.

A. Azurea.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ14. Where and in whose drug store are you working now?

A. My own, in Fairburn, Georgia.

XQ15. How many drug stores there?

A. One.

XQ16. How far from Atlanta is it?

A. About nineteen miles.

XQ17. Who invited you to come here?

A. Mr. Bell, the Lilly salesman in the Atlanta district.

XQ18. Personally or by letter?

A. Neither; by phone.

XQ19. When did you leave home, and when will you get back?

A. I left home yesterday at 9.10 A. M. and don't know when I will get back, but at the earliest possible moment.

XQ20. At whose request did you testify in April, 1915?

A. Mr. John H. Vinson, representative of the Eli Lilly Company in the Macon territory.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ21. In your experience as a retail druggist, both as proprietor and as clerk, what can you say respecting the sale or demand for Merrill's Choc-Quin in the Georgia territory?

Objected to as irrelevant.

A. I have never had any experience with the above named, neither have I ever seen any.

RDQ22. How many retail drug stores have you been employed in in Georgia?

A. Four, Millageville, Macon and Marietta, and in Fairburn now. In Macon I was in the employ of Taylor Bayne Drug Company that had six stores there.

Deposition closed.

ROBT. H. GREENE.

Adjourned to meet Thursday, November 8, 1917, at 9.30 A. M.

Washington, D. C., Nov. 8, 1917, 9.30 A. M.

Met pursuant to adjournment.

Parties present as before.

W. R. BELL, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Are you the same W. R. Bell who has heretofore testified as a witness in this case on behalf of the plaintiff?

A. I am.

Q2. Are you acquainted with Mr. John Fielding Wilson, a traveling salesman for Wm. R. Warner & Co.?

MR. RAWLE: Objected to as not admissible at this stage of the proceeding, testimony having been given on behalf of plaintiff (such testimony itself being out of order) covering alleged acts or statements of Wilson, and Wilson having been called to state his version; all further testimony being therefore inadmissible and notice of motion to strike out is given.

A. I am.

Q3. How long have you know Mr. Wilson?

A. About seven years, first when he was engaged in the retail drug business in Athens, Georgia, a point in my territory that I frequently work. After leaving Athens I knew him as a clerk in various stores in Atlanta, Georgia; later as a representative of Wm. R. Warner & Co.

Q4. When called as a witness for defendant on July 5, 1917, Mr. Wilson testified in answer to XQ61: "I do not go around in the prescription room to see what a man has." Have you knowledge of any facts bearing upon this subject, and if so, please relate them?

MR. RAWLE: Same objections and further, that the question is irrelevant, inasmuch as the answer of Wilson referred to was immaterial and was brought out on cross-examination, and cannot be rebutted by plaintiff.

A. I have. On several occasions I have found Mr. Wilson behind the prescription counters soliciting orders. One specific occasion in College Park Pharmacy, at College Park, Georgia, I walked in the store, going directly to the prescription room. As I approached I heard two voices, one stating: "This is exactly the same as—" a sentence that was never completed, because at that moment I appeared behind the counter. The two people present were Mr. Wilson and Mr. Adams, the proprietor of the store. Mr. Wilson had in his hand a sample bottle that I did not recognize. I saw him replace it in his sample case. This would seem to show that he was in the act of soliciting business behind a man's prescription counter. His order book was open at the time.

Q5. Did you recognize the voice uttering the sentence which was not completed, and if so, whose voice was it?

A. Yes, I recognized Mr. Wilson's voice.

Q6. Mr. Wilson, in his deposition above referred to, in many of his answers, both direct and cross-questions, places special stress upon Merrill's Choc-Quin as a preparation which he frequently referred to among others as similar to Quin-Coco. In answer to XQ8 he stated that he never referred to Lilly's Coco-Quinine without including the rest. That lots of time he never referred to Coco-Quinine at all, and "lots of buyers in Georgia used Merrill's, physicians and druggists." What do you know about the extent of use of Merrill's Choc-Quin in the drug stores in your territory?

MR. RAWLE: Same general objection repeated. Also because the question is irrelevant and for the special reason above given that the testimony of Wilson referred to is immaterial and was developed on cross-examination and therefore cannot be rebutted on behalf of plaintiff.

A. I have never seen a package of this product on the shelf of a drug store in my territory. Neither have I seen it nor heard of it in stock of the wholesale drug houses. Until about two months ago I did not know this product was manufactured. It certainly has no sale in my territory. Inquiry of the wholesale drug houses in Atlanta, in my territory, develops the facts that they do not even stock the product, showing also that there is no demand for it.

Q7. Have you any evidence in reference to the demands for this product at the jobbing houses in Atlanta, and if so, will you please state?

A. I have a letter from each of the pharmaceutical buyers of the two jobbing houses in Atlanta, that from the Lamar & Rankin Drug Co. being as follows:

"Atlanta, Ga., Nov. 5, 1917.

"Mr. W. R. Bell,
Rep. Eli Lilly & Co.,
Atlanta, Ga.

Dear Sir:—

Answering yours of Nov. 2nd, will state that we

do not carry in stock Merrill's Choc-Quin, as the demand for this item has never been sufficient to warrant us in stocking it.

While we have bought less than five gallons of this preparation, these purchases were made to fill orders turned in to us by the representative of the Wm. S. Merrill Chemical Co.

Very truly,
Lamar & Rankin Drug Company,
By H. G. Hollingshead,
Pharmaceutical Buyer."

The one from John B. Daniel is as follows:

"Atlanta, Ga., 11-5-17

"Mr. W. R. Bell,
Representing Eli Lilly & Co.,
Atlanta, Ga.

Dear Sir:—

In reply to your letter of recent date will say that we have practically no demand whatever for Merrill's Choquin. We only carry in stock a very small quantity of this product to fill orders turned to us by Wm. S. Merrell & Co., representatives. We do not recall ever having had any volunteer orders for this item.

Very truly yours,
Jno. B. Daniel Inc.
J. M. Perdue,
Pharmaceutical Buyer."

These letters are signed by the pharmaceutical buyers respectively of these jobbing houses. I requested them to swear to the contents before a notary public, which was done, and I now hand these letters to you.

Mr. Bradford: The letters referred to are offered in evidence and marked "Plaintiff's Exhibit, Letter from Lamar & Rankin Drug Co." and "Plaintiff's Exhibit, Letter from Jno. B. Daniel Inc." respectively.

MR. RAWLE: The offer is objected to for the reasons last above given, and for the further reasons that they are inadmissible and hearsay, and because the letters have been copied into the record without copying into the record the affidavits attached to each letter.

Q8. In answer to XQ78 Mr. Wilson stated: "I am not very familiar with Coco-Quinine, only in the fact that it contains two grains of quinine sulphate." What have you to say as to this?

MR. RAWLE: Same general objections which have been previously made.

A. I should think Mr. Wilson would be very familiar with Coco-Quinine, from the fact that he was engaged for some time in the retail drug business, where he necessarily came in contact with Coco-Quinine in filling prescriptions for it. I am quite sure, although I have not access to my records, that Mr. Wilson bought Coco-Quinine from me. By his own admission in his testimony he must have, and did stock this product in Athens, Georgia, where he was engaged in business.

Q9. Is your recollection clear that you did call upon him while he was in the retail drug business at Athens, Georgia, and solicit orders and sell him goods in your line, and if so, how many times, if you remember?

Same objections.

A. I remember very clearly calling on Mr. Wilson and selling him some goods, rarely ever failing to get an order when I solicited it. I cannot state positively the exact number of times I called on him, but I made the territory about every six weeks and called on him on each trip while he was in business.

Q10. Is it the usual or unusual thing for a traveling salesman for drug houses to go behind the prescription counters of the retail drug stores from which they are soliciting orders?

Same general objection, and as irrelevant.

A. It is certainly the general custom and practice of pharmaceutical salesmen to solicit business from behind the prescription counter. At least, this is the case in the southern territory, with which I am familiar. It is very difficult to get an order without doing this.

Q11. What do you know about the extent of the sale of H. K. Wampole's chocolate quinine preparation in your territory?

Same general objection.

A. There is practically no sale for it at all in my territory. I do not recall ever having seen a package of this product in my territory.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ12. Are you a salesman in the employ of Eli Lilly & Co., defendant?

A. I am.

XQ13. How long have you been such?

A. A little over seven years.

XQ14. Have you had the same territory substantially all that time?

A. Yes, for five years I worked the entire Northern Georgia territory, for two and a half years the city of Atlanta, Georgia, and suburbs only.

XQ15. In the last two and a half years has your territory been coterminus with that which is worked by Wilson?

A. Yes; Mr. Wilson works the city of Atlanta and suburbs, as well as surrounding country territory.

XQ16. Does Wilson work any territory which you do not?

A. Yes.

XQ17. How many drug stores are there in your present territory?

A. About one hundred and sixty or seventy.

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XQ18. How many drug stores were there approximately in your territory prior to two and half years ago?

A. At that time there were about two hundred and fifty.

XQ19. On the occasion when you saw Wilson behind a druggist's counter, you have said that an order book was open. Describe it?

A. I would not attempt to describe it. Having in mind the ethics of the traveling salesmen, I immediately left the store, giving Mr. Wilson the opportunity to solicit his order. It is customary for one traveling man to give the first man there a clear field.

XQ20. Tell me what you can about the order book which you said you saw?

A. As stated, I will not attempt to describe it, having only seen what appeared to be an order book close to Mr. Wilson's sample case, where it would most likely be were he writing an order.

XQ21. Was it a book in which he appeared to be entering orders?

A. He was not in the act of entering an order, but was in the act of soliciting an order.

XQ22. Why is it, if you saw his order book, you cannot give any idea of what you saw?

A. The only order book I am interested in is my own, and I have never had any occasion to examine one of Wm. R. Warner & Company's salesmen order book.

XQ23. Is that the only answer you can give?

A. Yes, and the fact that I did not stay long enough, nor did I make any effort to examine closely Mr. Wilson's order book.

XQ24. Is it possible that "lots of buyers in Georgia use Merrill's, physicians and druggists," without your knowing it?

A. It is hardly possible that I would not discover at least an occasional package of this product if it were

carried in stock. I certainly make every effort to see my prospective customer's line of goods, and I believe it would not be difficult to find this product if it were stocked.

XQ25. But you have testified that you never covered South Georgia, and that for the last two and a half years you have covered only Atlanta and suburbs?

A. I have not testified that I had never covered South Georgia. I did testify that I have only covered Northern Georgia for Eli Lilly & Co.

XQ26. For whom did you cover South Georgia and when?

A. For two years prior to my connection with Eli Lilly & Co. I covered part of Southwestern Georgia and the city of Macon, Georgia, for Lamar, Taylor & Reilly Drug Company, jobbers at Macon, Georgia.

XQ27. Referring to the two letters produced by you and read into the record, was there not appended to each an affidavit by the person who signed the letter?

A. There was.

W. R. Bell.

Edmund Francis O'Connell, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By Mr. Bradford:

Q1. Please state your name, age, residence and occupation?

A. Edmund Francis O'Connell; age, 41; Providence, R. I.; salesman for Moore & Company of Worcester, Mass., traveling salesman for pharmaceuticals and non-secrets.

Q2. Did you formerly travel as a salesman for Wm. R. Warner & Co., defendant herein, and if so, covering what period and what territory?

A. Yes; starting, as I remember it, January 14th,

1914, I worked for them until January, 1917. The first territory I had was Vermont and Western Massachusetts. Later I took on the State of New Hampshire, starting at Keene, N. H., and then later the State of Maine. Then when I was put on my regular territory permanently, Rhode Island and Western Massachusetts.

Q3. Do you know Mr. S. J. Hagaman, sales manager for Wm. R. Warner & Co.?

A. Yes, sir.

Q4. In what way did you make his acquaintance and what experiences have you had with him?

MR. RAWLE: Objected to because the matter inquired in is part of plaintiff's *prima facie* case and because the examination of the witness thereon is inadmissible at this stage of the proceedings.

A. My first meeting with Mr. Hagaman was at the Sloane's Liniment plant in Boston, Mass., where he, with another gentleman by the name of Mr. McNulty, hired me to go on the road for Wm. R. Warner & Co. My next meeting with Mr. Hagaman was in Springfield, Mass., at the Kimball Hotel, where he started out and worked with me for one week in the city of Springfield, demonstrating the Wm. R. Warner Company's line.

Q5. In his testimony in this case Mr. Hagaman has stated that he does not, when soliciting an order from a druggist, talk to him about what he has in stock or about items of other houses or whether he has items manufactured by other houses on hand, etc. (See Qs. 9, 10 and 11, sur-rebuttal.) Please state your knowledge of Mr. Hagaman's methods in soliciting orders for the Warner line, so far as they are consistent or inconsistent with his said testimony.

Same objection.

A. Mr. Hagaman generally went into a store carrying along with him what I would term a sample

case, a good deal like a dress suit case. This case contained the Pfeiffer package goods, perfumes, and a catalogue containing Sloan and Kickapoo line, Dr. King's and other patents. In starting in to sell the line he generally starts on the pharmaceuticals, either using the liquids or pills or tablet samples. For instance, pill Alloin, Strychnine, Belladonna and Ipecac, displaying them to the druggist at a certain price, to take the place of Lapactics sold by Sharpe & Dohme. A pill known as pill phenolpthalein compound, known as Pill 541, displayed to take the place of a pill made by Parke, Davis & Co., called Alophen pills. Coco-Quinine, made by Eli Lilly & Co., displaying Quin-Coco; Gray's Glycerine Tonic Comp., displaying Glycerine Tonic and demonstrating to the druggist the same taste and appearance for these items, and so on.

Q6. I call your attention to Plaintiff's Exhibit, Thurman Copy of Document No. 3, and ask you if you had such a document while working for Warner & Co., and if Hagaman used such a document in his work with the druggists, what the document was used for and what it was commonly known as?

Mr. Rawle: Same general objection and because the popular name of the exhibit is immaterial.

A. I did have such a document. Mr. Hagaman did use such a document in his work with the druggist. This document was used to demonstrate the Warner lines, to show similarity of their goods with other well-known makes. It was commonly known as the Blue List, that is the way I always understood it.

Q7. Taking the item near the bottom of page 1, starting with Coco-Quinine, please state what Mr. Hagaman would say to the druggist, and what use he would make of this list, if any, in selling that item?

Same general objections.

A. Mr. Hagaman would compare the price of Quin-

Coco with Coco-Quinine, and also would show the druggist the savings between the two preparations and their similarity.

Q8. Did he state to the druggist on what kind of orders he could sell Quin-Coco or what disposition he could make of the product if he bought it?

MR. RAWLE: Same general objection and also because the question is leading.

A. The way that I understood in demonstrating Coco-Quinine and Quin-Coco to the retail druggists and also the way the druggist would take it from him, that he could refill his former prescriptions calling for Coco-Quinine with Quin-Coco.

Q9. What were the instructions received by you from Mr. Hagaman in reference to the general policy of the house in selling goods?

Same general objections.

A. To get the business in the territory by using all means with catalogues, samples and I might also say using the Blue List.

Q10. Did the house send out letters frequently, and what was the nature of these letters?

Same objections.

A. Yes. Each letter generally taking up some individual preparation, giving the selling points and also various ways to dispose of the goods. For instance, Garden Bouquet perfume, to show the druggist by demonstrating the odor with an atomizer furnished by the Wm. R. Warner & Co., and matching it up with Mary Garden. Mr. Hagaman has done this in my presence; also Mellier's Vogue. We had a small card giving a list of the names of the popular odors or perfumes on one side, numbered, and a list of our perfumes on the other side as mates or matches or substitutes under corresponding numbers, and difference in prices.

Q11. In selling a druggist for example the War-

ner A. B. S. & I. pill, how would Mr. Hagaman solicit an order from a prospective customer?

Same objection.

A. By taking a sample from his pill case and pouring some right out into the palm of his hand and having the druggist get some of the Lapactic and comparing the two together.

Q12. Respecting the pill phenolpthalein compound No. 541, what do you know in reference to the sale of this pill to take the place of a pill manufactured by another house, if anything?

Same objections, and as irrelevant.

A. During the year 1916 I had an occasion to call on a customer in Springfield, Mass., and at that time phenolpthalein was at a very high price and hard to get. The druggist that I have in mind wanted some of the phenolpthalein comp. pills, which we could not furnish at the time, and he wanted to know from me whether or not he could not have these pills made up, eliminating the phenolpthalein and substituting some other drug to take its place, which I submitted to the house and their pill man or chemist made up a pill. These pills, formerly pill phenolpthalein comp., pill 541, he had sampled the neighborhood with them and he wanted to still hold the business.

MR. RAWLE: The answer is further objected to because the witness does not state facts within his knowledge and as vague.

Q13. What other items, if any, do you have in mind that were pushed as replacers or substitutes for popular items of other houses; just name the leaders?

MR. RAWLE: Objected to on the general grounds above given and as irrelevant.

A. Solution of peptonized iron and manganese compound for Gude's Peptomangan, Fluid Viburnum Compound S. & H. for Hayden's Viburnum Compound,

Triloids for Lilly's Bichloride Diamond Antiseptics; Akresol S. & H. for Lysol. There are quite a few others that I can remember, but I guess these, with those before mentioned, are the leaders.

Q14. Have you as a salesman personally sold Quin-Coco for Wm. R. Warner & Co.?

A. Yes, sir.

Q15. What was your sales talk to the druggist in soliciting an order for Quin-Coco?

Same general objection repeated.

A. The first point that I demonstrated was that I did not think that the difference between the two preparations, Quin-Coco and Coco-Quinine, was any. The second that it was a good saving for the druggist, and the third that the physician or patient I did not think could tell the difference.

Q16. Was the item a good selling item in your territory?

Same general objection.

A. In some towns it was. In other places, of course, we did not sell so much. In points like Springfield, Mass., and Pawtucket, R. I., I had sold quite a little of it.

Q17. What was your sales talk to a druggist when seeking an order for Triloids?

Same objection and as irrelevant.

A. As I remember it, Lilly's Diamond Antiseptics were selling at the time for $2.25 a dozen. Triloids were selling at $1.50 a dozen, and a druggist by buying three dozen Triloids would get one-half dozen free, and also that the bottle on account of the shape compared pretty near the same as Lilly's, which would give him a chance to push and sell the Triloids in the place of Lilly's.

Q18. How many times did you travel with Mr. Hagaman?

A. Quite a few times, working with him at Portland, Maine; Springfield, Mass.; Worcester, Mass.; Providence, R. I., and Pawtucket, R. I., and New Bedford, Mass.

Q19. What was the substance of your sales talk when soliciting from a druggist an order for Garden Bouquet Perfume?

Same objection and as irrelevant.

A. In selling Garden Bouquet perfume I would get the druggist to produce if I could his Mary Garden and demonstrate by wetting a small blotter with Garden Bouquet and also Mary Garden, comparing the two together and also swapping the blotters around trying to get him if he could to tell which was which, and also using the atomizer demonstration.

Q20. I hand you a series of letters and ask you whether or not these are original letters received by you from Wm. R. Warner & Co.?

MR. RAWLE: Same general objections.

A. They are.

MR. BRADFORD: The letters referred to are offered in evidence and marked respectively Plaintiff's Exhibit, O'Connell Letters No. 1 to No. 30."

MR. RAWLE: Same objection to exhibits.

Q21. In selling goods as testified to by you did you or did you not follow the instructions and the example of Mr. Hagaman?

General objections repeated and especially because the question calls for a general statement instead of for facts.

A. Always.

Direct-examination closed.

"PLAINTIFF'S EXHIBIT, O'CONNELL LETTERS NOS. 1 TO 30."

"O'Connell Letter No. 1"

Philadelphia, 11/17/15

Subject: Sales Department.
Friend O'Connell:

Our Mr. Hagaman will have the pleasure of working with you two days, Monday and Tuesday, Nov. 22nd and 23rd. Immediately on receipt of this letter, write Mr. (S. J.) Hagaman direct, C/o Parker House, Boston Mass., where he can meet you either Saturday night Nov. 20th or Sunday Nov. 21st. We would very much like to have you meet Saturday evening as Mr. Hagaman's stay will be rather short and naturally we are anxious to have you get all the benefit possible from it. In the meantime, make a memorandum of everything you wish to take up with him, so that the ground can be covered thoroughly.

Truly yours,
WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 2"

No. 352
Date Jul 2, 1914

Subject Matter QUIN COCO, S & H.
Dear Traveler:

Record of Purchases of
Quin Coco S & H
By
Jacobi Drug Co., Dyersburg, Tenn.
Mr. DeVall's Customer.

3/5/8	2 gal	Personal
6/4/9	1 "	"
8/11/9	1 "	"
8/26/9	2 "	"
11/19/9	2 "	"

3/30/10	2 "	Mail
8/10/10	2 "	"
9/17/10	2 "	Personal
12/1/10	2 "	"
1/7/11	2 "	"
8/24/11	2 "	Mail
10/24/11	3 "	Personal
2/6/11	2 "	"
4/26/12	2 "	"
8/21/12	2 "	"
11/22/12	2 "	Mail
2/22/13	5 "	Personal
10/13/13	4 "	"
4/10/14	4 "	Mail

The above is evidence how *Quality Repeats.* Quality repeats for about the same reason that "Honesty is the best policy."

In the case of Quin Coco, each teaspoonful contains two grains Quinine Sulphate (Highest quality) in its original unchanged form, so you see, if Quinine Sulphate is a good medicine, Quin Coco S. & H. is bound to be. The only difference between the two is, children don't like Quinine Sulphate and fuss and fume when forced to swallow it, but they *love* Quin Coco S & H, and gladly take it. What a comfort to mothers! Only a mother can tell.

What a valuable item to the Doctor! Makes him popular with the little folks. You know it pays the doctor to stand in with the babies, just as it pays you to stand in with the clerk.

Remember, Quin Coco spells "quality", and quality repeats.

Send us your orders,

WM. R. WARNER & CO.,

H. PFEIFFER, *Prest.*

"O'Connell Letter No. 3."

Date Oct. 14, 1915

Subject Matter SEASONABLE ITEMS.

Dear Traveler:

With but few questions, for practically everything we carry, there is a demand in all seasons. However, the following is a list of those items which are particularly seasonable now and deserve your special attention.

Dr. Hobson's Eczema Ointment and all Salves
Tolu Lung Balsam and all Cough Syrups
Dr. Hobson's Laxative Fig Syrup and all other Laxative
Dr. Hobson's Cold Tablets and other Cold Remedies
Japanese Methodine
Sloan's Liniment and all other Liniments
Plasters, all kinds
Hobson's Wine Ext. Cod Liver Oil with Malt & Hypophos
Chocolate Quinine
Dr. Hobson's Soothall and Catarrh Remedies
Dr. Hobson's Sore Throat Gargle
Pitcher's Baby Brant Castoria
Dr. Hobson's Bronchial Wafers
Dr. Hobson's Throat Lozenges
Dr. Hobson's Camphor Ice
Sloan's Fever & Distemper Remedy
Corn Husker's Lotion
Dr. Hobson's Fragrant Toilet Cream and all other creams
Dr. Hobson's New Life Blood & Rheum. Remedy and all Rheumatic Remedies
All Perfume and Toilet Articles
Haywood's Antiseptic Eye Water and all Eye Remedies
Guaiatonic
Tritica

Quinaton
Syr. Tolu & Heroin Comp., Special
Tonics
Cold Preparations
Elixir Salicylic Comp.
Digestants
Lithia Tablets
F. L. T.'s
Anti Congestus Comp. Rx. A
Plasticum
Alka-Men-Thym
Thymenthol

Cordially,
WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 4"

Date 4/1/15

Subject "Quin Coco, Lilly vs Warner"

Dear Traveler:

Eli Lilly & Co. have filed suit in Federal Court against Wm. R. Warner & Co., to stop the manufacture and sale of Quin Coco, alleging that Quin Coco is dispensed by the trade for "Lilly's" Coco Quinine and that this is done at the suggestion, urging, advice and instructions of our firm through our travelers and agents. That our travelers suggest, urge, advise and instruct the trade to dispense Quin Coco when "Lilly's" Coco Quinine is prescribed or called for, is unthinkable and we do not believe they can establish such fact.

Eli Lilly & Co., have hope to establish a perpetual and exclusive right to make and sell a chocolate mixture of Quinine. If successful, this will mean they will stop all manufacturers who now supply such a product, and they can prevent anyone, including the retail druggist from making such mixture or even the

doctor from prescribing (except "Lilly's" Coco Quinine) such a mixture.

Eli Lilly & Co. base their claim for such rights on the fact that they were the first to make a chocolate Quinine mixture, and that chocolate is not an essential ingredient as a disguiser of the bitter Quinine taste.

We cannot conceive of the courts granting such a perpetual monopoly. It would be a tragedy to the manufacturer, doctor, druggist and consumer. While we are opposed to law suits, the nature of the suit and allegations were such as to prevent adjustment out of court, and we must defend the drug trade, our travelers, the product and ourselves. To do this successfully, we need the help of the dispensing and prescribing doctor, the druggist and yourself. A part of what we desire to establish is

1. That you and all our travelers offered and solicited orders for Quin Coco, as Quin Coco, or a sweet chocolate quinine mixture or syrup.
2. That you did not suggest, urge, advise or instruct the trade to dispense Quin Coco upon calls or prescriptions for "Lilly's" Coco Quinine.
3. That the druggists who purchased Quin Coco differentiated between Quin Coco and "Lilly's" Coco Quinine, dispensing EACH when specified on calls or Recipes, and dispensing EITHER upon calls or prescriptions specifying Chocolate Quinine or Syrup of Quinine or sweet Quinine.
4. That general knowledge of "Lilly's" Coco Quinine is limited to the physician and drug trade and that "Lilly's" Coco Quinine is not generally known either by name, or package to the general consumer or laity.
5. That QUIN COCO is used and dispensed by the dispensing doctor.
6. That QUIN COCO is prescribed under the name Quin Coco by the prescribing doctor.

a. We desire to locate and put in evidence original prescriptions for Quin Coco.

7. That QUIN COCO has been sold to parties who had never previously used "Lilly's" Coco Quinine.
8. That Druggists dispense Quin Coco labeled Quin Coco, or labeled Syrup Quinine, Syrup Chocolate Quinine or Sweet Chocolate Quinine.

The purpose of such evidence is in part to prove a legitimate market for Quin Coco and a sweet chocolate syrup of Quinine, and that neither Quin Coco nor other chocolate Quinine mixtures depend upon dispensing these on calls or recipes for "Lilly's" Coco Quinine for their sale. We desire this information as soon as possible, and we will appreciate

1. Names of doctors who dispense Quin Coco, or Chocolate Quinine mixtures other than "Lilly's" Coco Quinine.
2. Names of doctors who prescribe Quin Coco or Chocolate Quinine mixtures, other than "Lilly's" Coco Quinine.
3. Names of druggists who have filled prescriptions for Quin Coco or chocolate Quinine mixtures other than "Lilly's" Coco Quinine.
4. Names of druggists who have calls for Quin Coco or other chocolate quinine mixtures other than "Lilly's" Coco Quinine.
5. Also whether you know or have reason to believe such parties would be willing to testify to these facts.

In connection we hold no ill will against Eli Lilly & Co. This suit is one to establish a principle, and not to embarrass or annoy a competitor. Eli Lilly & Co., in our opinion, stand in this suit favoring monopoly; we in our opinion, stand for competition. That a person or firm should have perpetual monopoly on a

product by reason of having first introduced said product, or because of a color, flavor or any ingredient in the product, seems unthinkable. We believe Eli Lilly & Co., are entitled to a monopoly and protection on their brand—"Lilly's" Coco Quinine, but not the exclusive and perpetual monopoly on all sweet chocolate quinine or syrups.

Further, to the writer, Lilly's suit is an indictment of the drug trade, our travelers and ourselves, and we hope to protect each. In connection we request that you do not talk about the suit other than what is necessary to obtain data and facts requested in this letter. This information we will appreciate at your earliest convenience.

We also avail ourselves to express our full confidence in your integrity and sales method and do not for a moment believe you are guilty of the allegations, that you willfully and repeatedly suggested, advised, urged or instructed the trade to dispense Quin Coco when "Lilly's" Coco Quinine was called for or prescribed.

Trusting we can successfully defend, we are,

Yours truly,

WM. R. WARNER & CO.

H. Pfeiffer, Tres.

"O'Connell Letter No. 5"

PRACTICAL POINTS No. 26

TRILOIDS.

Dear Travelers:

Triloids are rapidly becoming one of our best selling items, and is a preparation, that has great possibilities. Recently, a salesman, very successful in selling Triloids, visited the House, and gave us the talking points which enabled him to interest and sell his customers.

His general plan to sell Triloids was, to convince

the druggist that 90% of this class of preparations was sold directly to the consumer, as a retail article and not through the physician, or on prescription. Bearing this point in mind, his specific talking points are as follows:

1st: The name Triloids, as being better for a retail package, than the word Antiseptic Tablet, and removes any possibility of embarrassment a lady customer might have in calling for Antiseptic Tablets.

2nd: Shape and color of bottle. He calls special attention to the fact that it is impossible to pick up the Triloid bottle, without feeling the rough, safeguarding edges of the bottle. Try and pick up the bottle. This, with the blue color, makes it doubly proof against errors.

3rd: The net price of $1.28 per dozen, which our offer accords the druggist, realizes him over 14c. profit on every bottle sold. His method in quoting prices, was not to figure the price per bottle, per dozen, but to impress the dealer that he gave him the gross price on three dozen lots, and then, as special bonus, included ½ doz. free.

4th: The fact that Triloids are compressed, instead of molded. It rather surprised the writer, and may surprise you, that this salesman succeeds in selling Triloids, just because they are hard and compressed, instead of being molded and disintegrating quickly. This point, however, is well taken. Being a compressed tablet, it retains its shape until completely dissolved, thus if the mixture is used before the tablet is completely dissolved, it is only possible to apply as an antiseptic solution. While if the tablet is molded, it would disintegrate quickly, and if shaken, might be used before the Corrosive Sublimate was entirely dissolved. In such a case, if used either as a douche, or a wound-dressing, it is possible to cause infection, and produce mercurial poisoning.

Every doctor and druggist with whom he uses this

argument, fully agrees with him, and he overcomes entirely, the objection some buyers have made to Triloids.

We consider turning a point, apparently against you, into a selling argument, the finest quality of salesmanship, and we believe every traveler who hasn't used this argument, can do so to advantage.

Triloids is one of those preparations, combining all points of a successful item:—The House likes to see it sold; it gives perfect satisfaction; it increases the salesman's order; druggists realize a large profit, and the consumer is better satisfied and served.

Triloids merit your effort. See that you have them on every order, for they are sure to please your customer, and repeat.

"O'Connell Letter No. 6"

Date 11/25/14

Subject Triloids.

Dear Traveler:

In some trade and cosmopolitan papers, with the view of causing vomiting and preventing fatal results, suggestions have been made to add an emetic to Bichloride Tablets. This plan would be effective only when the tablet is dissolved. If the tablet is taken whole, the poison would be absorbed before the emetic properties of the tablet would cause vomiting, and would not be effective on the ordinary form of Bichloride Tablets, such as Bernays, which can be swallowed whole; it would however, be effective on such tablets as Triloids, which owing to their size and shape, must of necessity, be dissolved before being taken.

Investigation proves that Triloids as now made, tend to produce vomiting. We have two specific instances of persons who attempted to commit suicide by taking Triloids, vomiting as soon as they had taken the mixture, and completely recovering, seemingly none the worse of their experience.

This vomiting tendency is due not only to the cor-

rosive Sublimate itself, but also to Muriate Ammonia, which has as you know, expectorant properties, and has a tendency to raise phlegm. While there is no certainty that Triloids will so act in every case, the only direct cases of poisoning by Triloids brought to our attention, were the two in question, and in both of these the effects were as above stated.

We give you this information as it may further assist you in placing and increasing your sales of this product. In connection, we also copy letter from one of our salesmen who has been especially successful in selling Triloids, outlining his selling points. If you have any special plan which you have found particularly effective, kindly advise us so that we can pass the information to your brother travelers.

"In selling Triloids, I have found that the points that influenced the sale (apart from our bonus offer—which by the way should be strongly presented, giving cost difference down to the bottle) were, more rapid solubility, in either hot or cold water (with or without stirring) than any other tablet on the market, including various citric acid tablets. This is especially good with the physicians—likewise less irritation to the hands, and less corrosive for instruments, and a clear blue solution. Also with the physicians, the impossibility of picking up a mercurious granule on cotton when dressing a wound and depositing same in the sore, which is very probable with a disintegrating tablet when it has not dissolved, but impossible with a Triloid, because it retains its shape until entirely dissolved.

We also have a better package—better protected with label, cap, neckband and shape of tablet and bottle, than the various styles on the market; also the possibility of the customer (who might accidentally, or otherwise take the tablet internally) vomiting on account of the emetic properties of Ammonia Chloride, when taken in large doses."

Truly yours,
WM. R. WARNER & CO.
G. A. Pfeiffer, Tres.

"O'Connell Letter No. 7"

Date Jun 2 1914

Subject Triloids
Dear Traveler:

As evidence of merit we give below testimonial received through our Florida traveler. In connection permit us to add that the sale of Triloids is increasing. This we consider due to your efforts and the fact that the product is right in every way—shape, finish, color, style of package and merit of the product. You do your customer a favor every time you induce him to stock.

Truly yours,
WM. R. WARNER & CO.
G. A. Pfeiffer, Trea.

Dr. H. McMullan, of Morriston, Fla., writes:—

"I will never use any other antiseptic tablets but 'Triloids'. I gave the S. A. L. agent some of P. D. & Co. tablets to use as a wash in smallpox and his wife gave him one in a pint of warm water, misread the directions. My stomach pump was broken, so I had to get an assistant from adjoining town and it was a miracle I saved his life."

"O'Connell Letter No. 8"

Date 7/28/15

Subject 29 BOTTLES IN 4 DAYS.
Dear Traveler:—

29 bottles in 4 days:—$29.00 per day, is Friend Whitlock's record with "GARDEN BOUQUET". This record OUGHT TO HOLD THE TRAVELER who's constantly bemoaning that perfume trade has left the drug stores.

This record OUGHT TO MAKE THE TRAVELER who hasn't sold a bottle of Garden Bouquet sit up and at least open his eyes to the fact THAT THE TRAVELER WHO DOESN'T KNOW PERFUME *CAN NOT* BE SOLD—SELLS IT.

THIS RECORD OUGHT TO MERIT YOUR TAKING GARDEN BOUQUET, smelling of it, letting lady friends smell it, creating a salestalk, and getting a bottle or two on every order.

"GARDEN BOUQUET" is a universal odor. It appeals to both MEN AND WOMEN—YOUNG OR OLD—BLACK OR WHITE.

"GARDEN BOUQUET" JUSTIFIES THE DRUGGIST'S DRIVE.

Think of the price, $4.00 per 8 oz, as against $8.00 and $12.00 and over asked by other manufacturers for a similar odor.

Do you know we are NOT BEGINNING TO GET THE PERFUME BUSINESS our prices and offers entitle us to and as perfume is strictly a salesman's proposition, we can't for the life of us BLAME ANYONE BUT OUR TRAVELERS.

Perhaps you don't know it, but we have the 3 BEST ODORS IN THE WORLD. These three odors cover the entire perfume demand.

"VOGUE"
"ORIANA"
"GARDEN BOUQUET",

Can you beat them, and the price is right on every one.

Then think of our offer:

Sell 1 bottle each of these, add 1 White Rose, 1 Violet, then give the druggist a bottle of LOCUST BLOOM free. Figure out the dealer's profit. There isn't a logical reason why he should turn you down, and remember—

GARDEN BOUQUET
29 bottles in 4 days
$29.00 per day—spells:
GARDEN BOUQUET POSSIBILITIES

that mean perfume success for you, for us, and for the druggists.

Truly yours,
WM. R. WARNER & CO.
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 9"

Date Dec 9 1915

Subject Matter MELLIER'S GARDEN BOUQUET.

Dear Traveler:

Why is it we can sell Mellier's Garden Bouquet at $4.00 per 8 oz. while many other perfumers are getting double and more than double for a similar odor?

Is there a difference in the quality? Make comparisons, and rest assured you will find Mellier's quality is the best.

Why then the difference in price? There is only one answer, namely, manufacturer's profit. We based the selling price of Mellier's Garden Bouquet on "value giving" basis, not on how much we thought we could get for it.

The Mellier and Alfred Wright Perfume lines give the retail druggist full value—quality in every drop, supplied to the retailer at a logical cost.

Our reasonable price on that high quality odor, Mellier's Garden Bouquet, clearly demonstrates this full value policy. Make the most of it—sell Garden Bouquet on every order and use it as a leader to introduce the many other value giving odors you have to offer.

Always start out to sell at least a 10 bottle order. In any event, insist on a 5 bottle assortment, and in either assortment include—

MELLIER'S GARDEN BOUQUET
MELLIER'S VOGUE
The Twin Repeaters.

Cordially yours,
WM. R. WARNER & CO.
H. Pfeiffer, Prest.

"O'Connell Letter No. 10"

Date Dec 23 1915

Subject Matter
MELLIER'S GARDEN BOUQUET.

Dear Traveler:

Mellier's Garden Bouquet seems to be popular

with practically *everyone*, which is another way of saying—

MELLIER'S GARDEN BOUQUET

is a hit—a ten strike—a synonym for popularity.

Now is the time to cash in on this popularity,

Now is the time for you to sell Garden Bouquet to the dealer.

Now is the time for the dealer to sell Garden Bouquet.

We are convinced the possibilities with this odor are extraordinary. We can sell $50,000.00 per year of this odor and then not reach the limit, nor at that overload anyone.

It will pay you to give Mellier's Garden Bouquet some careful thought. Develop live selling plans, demonstrate the odor, get it on every order, and always include a supply of its Twin—

MELLIER'S VOGUE

They are both repeaters.

Cordially yours,

WM. R. WARNER & CO.

H. Pfeiffer, Prest.

"O'Connell Letter No. 11"

Date Mar. 9, 1916

Subject Matter MELLIER'S GARDEN BOUQUET.

Dear Traveler:

Just to illustrate how a good thing repeats:

Record of Purchases by
F. C. Hess, Villa Grove, Ill.
11/15/15 1-8 oz. Personal
1/18/16 1-8 " Mail
2/25/16 1-8 " "

Record of Purchases by
Becker's Phcy. Calexico, Cal.
11/ 8/15 1-16 oz. Personal
1/31/16 1-16 " Mail

Record of Purchases by

A. E. Olle, Kenosha, Wisconsin.
11/22/15 1-8 oz. Personal
2/23/16 1-8 " Mail

Are you making a leader of this up-to-date odor? Analyzed from any standpoint it is an ideal item to push.

Quality—Repeats
Fascinating——Isn't it great?
Popularity—Appeals to most everyone and anyone.
Fashionable—Yes indeed!
Price—Its only low feature.
Style of Package—Inviting.
Seasonable—Now is the time to sell perfume.
Market—Every retail druggist in the U. S.

Mellier's Garden Bouquet is one of those happy chords in perfume which are only occasionally struck,—take advantage of it.

Sell at least an 8 oz. bottle to every druggist, and sell some 16 oz. bottles too.

Sure you can do it. Some ordinary salesman might not do it, but YOU can. We know it.

Cordially yours,
WM. R. WARNER & CO.
H. Pfeiffer, Prest.

"O'Connell Letter No. 12"

Date Jun 8-1916

Subject Matter: SALESMAN'S LETTER.

Dear Traveler:

How is your imagination? Have you developed the faculty to picture to yourself possibilities—for example, can you visualize what you can do with Garden Bouquet? Can you see yourself selling at least one bottle of Garden Bouquet each day—that would mean 312 in a year; total $1248.00.

But doesn't your imagination carry you a step

farther? Surely two bottles each day isn't many—624 in a year—$2496.00, not a bad amount for one odor.

But why not give still more scope to the imagination say at least 1-8 oz to every druggist you visit whose credit is good. That would be, well anyway five each day—1560 per year $6240.00 of one odor. Some commission for you on that kind of business.

But you say "Stop, why day dream?"

Listen, take the dream out of a business, and it stops growing. Certainly, dreaming alone won't get the business, but dreams of big things, backed up by work, work, WORK, will land the dreamer at the goal of success.

Picture to yourself what YOU can do with Garden Bouquet, then DO it.

No question about the repeating qualities of the odor. Here's Mr. Fly over in Carrier Mills, Ill., of whom Mr. Baldwin writes, "there are no 'flies' on him". He started in last November and bought 1-8 oz.—since then has purchased three more, a total of 4-8 ozs. within a few short months.

Then there is the Wentzelmann-Gilman Drug Co., Sedalia, Mo. Friend Brown was there the other day. Including their first purchase last November, they have bought to date 6-8 oz. bottles.

Mellier's Garden Bouquet possesses that something which makes it repeat. It is an order-opener for your perfume department.

Make an earnest effort to sell to every dealer you call on, and always try to include a good assortment of other bulk odors—a ten bottle offer, or at least a fine bottle offer.

Cordially yours,
WM. R. WARNER & CO.
H. Pfeiffer, Prest.

"O'Connell Letter No. 13"

SALESMAN'S LETTER.

Date Mar. 5, 1914

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

Do you believe in mental telepathy? Personally I am not prepared to talk much about it, but just a few minutes ago I had an example of something very much akin to that much talked of phenomena.

I was just starting to write you a letter about Mellier's Vogue and was thinking of what Mr. K. D. Mellier told us when we bought the Mellier line from him and his associates. While I was thinking the telephone rang and much to my surprise Mr. Mellier was on the other end of the wire. I answered his "Good Morning" by telling him that I was just thinking about him in connection with Mellier's Vogue. He replied by pointing out that Mellier's Vogue is an odor the public does not get tired of.

We must all recognize that perfumery is a matter of fancy, it appeals to people's fancy; for instance, a lady uses Violet for a few months and then her fancy changes and she wants a Rose, and so on. But Vogue is an exception—there is some appealing quality to it which puts it in the class of "once used always used". In other words, as a general thing, when a lady starts the use of Mellier's Vogue she will continue to use it. She may occasionally try some other odor, but she will always come back to Mellier's Vogue.

Mellier's Vogue is no experiment. Years ago Mr. Mellier from his long experience with it had reached the conclusion that it was the Star Odor to push. He did his level best to impress this fact on us when in 1904 we took charge of the business, and the present sales of Mellier's Vogue prove he was right. Today Mellier's Vogue is one of the biggest selling odors in the retail drug stores of the United States.

We ask your daily push back of Mellier's Vogue, because we know the odor justifies it—we know it is a repeater. Take our word for it—we are not guessing.

Start in today with renewed Vogue effort, and keep it up every day this year.

Cordially yours,
WM. R. WARNER & CO.
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 14"

SALESMAN'S LETTER.

Date Mar 12, 1914

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

When Mr. Mellier 'phoned me the other day he invited me to lunch with him on Thursday and our conversation during lunch naturally turned to Mellier's Vogue. We would talk about other things, but get back to that interesting subject.

Mr. Mellier attributes the great popularity of Mellier's Vogue to the fact that it is a perfect blend, no elemental odor predominating—as he expressed himself, "it's just Vogue".

The constituents of Mellier's Vogue are so artistically balanced as to bring out the best of each, yet each is submerged in the whole. In short, Mellier's Vogue is one of those happy hits of a life time

Boys, if you want to build up your perfume business you can't do better than to enthuse your customers and their clerks with Mellier's Vogue. By inducing them to push and demonstrate Mellier's Vogue they not only will develop a good Vogue business but at the same time rejuvenate their entire perfume department.

Suggest when demonstrating Mellier's Vogue to the trade you also make clear the big profit for them in handling and pushing it. Mellier's Vogue retails at 75c. per oz., and many dealers are selling it for $1.00. At the former price a 20 oz. bottle shows the Druggist

$9.00 profit on an investment of $6.00 or 150%. At $1.00 an oz., the Druggist's profit is $14.00 on an investment of $6.00, or 233-1/3%. What is there a Druggist can sell which will show him a better profit, and do you know of anything more pleasant and easier for a Druggist to handle than perfume?

Cordially yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 15"

SALESMAN'S LETTER.

Date Apr 2, 1914

Subject Matter Mellier's Vogue.

Dear Traveler:

2½ gal. Mellier's Vogue at $18.00.....	$ 36.00
11-20 oz. Mellier's Vogue at $6.00.....	66.00
Total.....	$102.00

Yes, the above represents the sales of ONE of our travelers.

No, not for 3 months, nor 2 months, nor 1 month, but for just 1 week.

No, this week wasn't several years ago, nor last year when conditions were different, but just last week, ending March 31, 1914.

No, this salesman's territory is not the easiest in which to sell goods—the fact is, it is quite a difficult territory, a territory where the consumption of perfume is not any too great and where competition is several times legion.

Yes, the man who made these sales knows how to sell Perfume—there is no question about that after noting the above sales of one odor only.

Well, you say, "Who did it, and where is he?" Brother Whitlock in Southern Iowa is the man and the territory.

And what he has done gives you an idea of the possibilities with this wonderful odor. Boys, determine to

place Mellier's Vogue in every store in your territory, and after placing it leave the dealer and his clerks enthused with the idea of pushing it.

It CAN be done!

Cordially yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 16"

SALESMAN'S LETTER.

Date Apr 9, 1914

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

There are two requisites for a good odor—
Fragrance,
Permanence.

The truth of this statement is self-evident.

Mellier's Vogue meets these requirements. We know YOU believe this and we know you can prove it to your trade. Be sure and take advantage of every opportunity to do so.

Mellier's Vogue is the corner stone of the foundation on which the retail druggist can build a profitable perfume business. And it is your duty to awaken the perfume conscience of the druggists in your territory—the quickest way to do this is to sell them Mellier's Vogue and enthuse them with the idea of demonstrating it to their customers.

One of the boys took exception to our mentioning in a recent letter that Mellier's Vogue appealed to the ladies. He writes, "Ladies, men, girls and boys use Vogue", and of course he is right. We suggest you give this little hint to the druggists—advise them to demonstrate Vogue to gentlemen as well as ladies, young and old.

Cordially yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

P. S. One of the boys from Texas writes as fol-

lows: "My total sales of Mellier's Vogue for week ending March 21st were $9.00. My total sales of Vogue for Monday 3/23 were $12.00. How is this for special effort?" Surely he made the right kind of a start on Monday.

W. R. W. & Co.

"O'Connell Letter No. 17"

SALESMAN'S LETTER.

Date Aug 27, 1914

Subject Matter MELLIER'S VOGUE.

An Instance.

The customer had a rack of 8-1# "Blank & Blank" odors, each bottle equipped with an atomizer, all well filled. "Any bulk perfumery today?" "No! No! Stocked for five years." I quickly saw that he only had flower odors and I knew to wake up his Perfume Dept. he needed a blend, of which class Mellier's Vogue is the prize.

I gave him a demonstration which *"Impresed"* him. I said you are *"Impressed"*, now you in turn can impress YOUR CUSTOMER and when you do, you will sell him. You may not sell every one Mellier's Vogue, but in most every instance you will make a sale of some odor, and I contend that Mellier's Vogue is well worth its cost as an *"Impressor"*. Get your customer to thinking of perfumery, and you will sell him.

In fact, ask yourself this question. Do you think of eating until you are impressed by hunger? Do you ever think of drinking (water) until you are impressed by thirst? Do you ever think of resting until you are impressed by a tired feeling? And all down the line I enumerated these impressors of life and I sold him 1-20 oz. Mellier's Vogue, Atomizer, etc. He was a German customer and very conservative, but I left him satisfied he had made a wise purchase.

Very cordially,

Texas Moore.

We may not all agree with Brother Moore concerning eating and drinking. For instance, some people whenever they see a double swinging door, want to drink, but we do all agree that Mellier's Vogue is a real "Impressor", an attention getter, a perfume department awakener, a real perfume.

Mellier's Vogue pleases the people.

Sell it to them.

WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 18"

SALESMAN'S LETTER.

Date Oct 5 1914

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

For almost ten years we have been pushing Mellier's Vogue—believed in it—recognized it as a winner—and the marvelous way this wonderful odor is selling proves our confidence has not been misplaced. It has stood the fire test of time and IS a big SUCCESS.

By the way, do you know Brother Whitlock of Iowa? We call him "Whit" for short—we guess his trade call him "Vogue". Look what he did in Des Moines in one September week.

5-½ gals	Vogue	$90.00
5-20 oz.	"	30.00
7- 9 oz.	"	21.00
		$141.00

In addition he sold 7-½ gal. bottles of other odors.

Yes, Mellier's Vogue sells in big towns, medium size towns, and in little towns. For instance, did you ever hear of Deer Lodge, Mont.? Sounds wild and woolly, doesn't it? But in a little over 2 years the druggist out there has bought 4-½ gals. Mellier's Vogue. Brother Hinton just sold him again the other day.

Brother, are YOU pushing Mellier's Vogue? If so, we compliment you—keep up the good work. If not, start in TODAY and no longer turn a deaf ear to opportunity, who stands knocking at your door with a beautiful bouquet of flowers, the odor of which is called Mellier's Vogue.

Cordially yours,
WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 19"

SALESMAN'S LETTER.

Date Oct 22 1914

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

Record of Purchases of
Mellier's Vogue
By
Carl J. Agee, King City, Mo.
Salesman Connell's Customer.

1/18/09	1-9 oz	$3.00	Personal
3/6/11	1-9 "	3.00	"
12/14/11	1-9 "	3.00	"
2/13/13	1-20 "	6.00	"
8/13/13	1-20 "	6.00	"
5/11/14	1-20 "	6.00	"
9/26/14	½ gal.	18.00	"

When a Vogue customer REPEATS like above there isn't much room left for doubt. Repeat orders speak louder than words. The many repeat orders we receive for Mellier's Vogue PROVE its quality.

Take the hint from the above illustration, take advantage of the Vogue possibilities in YOUR territory. Right NOW begin pushing Mellier's Vogue every day.

Cordially yours,
WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 20"

SALESMAN'S LETTER.

Date May 20 1915.

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

(COPY)

Chicago, Ills. 4/13/15.

Pfeiffer Chemical Co.,
St. Louis, Mo.

Gentlemen:

Please send me ½ gal Vogue Perfume (Mellier's).

Carl J. Klocker,
301 S. Halsted St.,
Chicago, Ills.

RUSH

Do you get that *RUSH*?

Chicago isn't very far from St. Louis, but Mr. Klocker wanted the Vogue he ordered rushed, and we want to tell you Mr. Klocker is no stranger to Mellier's Vogue. He has handled it since 1910, heretofore in 20 oz bottles—

He knows something of the possibilities with Mellier's Vogue,

He knows it repeats,

He knows its a quality odor,

He knows its a money maker for him.

Brother Huyck who calls on him don't have to hammer these facts into Mr. Klocker's head—Mr. Klocker *KNOWS* from experience.

And there are a lot of retail druggsts throughout the United States who KNOW. For instance, Mr. E. P. Whinrey, Muncie, Ind., Brother Gates' customer. Look what he has done with Mellier's Vogue in a few short years:

11/10/11	1-20 oz	$6.00	Personal
3/15/12	1-20 "	6.00	"
5/8/12	1-9 "	3.00	"

7/5/12	1-20 "	6.00	"
10/23/12	1-20 "	6.00	"
12/18/12	1-20 "	6.00	"
12/21/12	1-20 "	6.00	"
2/13/13	1-9 "	3.00	"
4/8/13	1-20 "	6.00	"
5/30/13	1-20 "	6.00	"
8/4/13	½ gal	18.00	"
8/9/13	1-20 oz	6.00	"
11/28/13	1-20 "	6.00	"
1/29/14	½ gal	18.00	"
5/4/14	½ gal	18.00	"
3/13/15	1-9 oz	3.00	"
4/28/15	½ gal	18.00	"
TOTAL	483 oz	$141.00	

Considering the retail price at $1.00 per oz., the income from the above is.....$483.00
Cost 141.00

Profit $342.00
% Profit 242.5

Yes, $342.00 or 242.5% profit on one odor. Shows what can be done with Mellier's quality. But it can't be done if the dealers don't buy it and dealers in your territory aren't likely to buy it unless YOU push it.

You see, Mr. Vogue Salesman, it is up to you to get that business today. This summer day, tomorrow's summer day and the many summer days coming are the days to get the Vogue business.

Summer Weather is Mellier's Vogue Weather.

The hot perspiring days are the heavy perfume consuming days:

Yes, we know they are the days the sleepy eyed druggist cocks his feet up on his desk and complains that there is "nothing doing", but not so with the wide-awake dealer—he is up in the front of his store, keeping his stock in nice snappy shape, picking up good

selling plans, prepared to demonstrate his perfumes and other live merchandise to prospective customers who come into his store. Yes, sir, the live Ph. G. will get many a shekel from his Perfume Department during the hot summer days—he will if he *TRIES!*

Cordially yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

P. S.—Sell the ½ gal. bottle—it means $18.00 on one line of your order blank.

W. R. W. & Co.

"O'Connell Letter No. 21"

SALESMAN'S LETTER.

Date Jun 3 1915

Subject Matter MELLIER'S VOGUE.

Dear Traveler:

The way Mellier's Vogue repeats proves its selling power. Take for instance Brother Stevenson of Los Angeles, one day last week he sold two different customers ½ gal. each, both of which customers previously had purchased Vogue, one in 9 oz. and the other in 20 oz. quantities. Such dealers are not taking hold of a fad or getting a cat in the bag, but on the other hand are buying an odor they know something about.

Of course, Mellier's Vogue will not sell itself—no perfume will. Mr. Druggist must demonstrate it, bring it to the attention of customers, who enter his store, etc.—that's the way he earns his profit (over 255% when bought in ½ gal.). Vogue quality brings the customers back for more—that's the way he reaps the benefits of good-will and builds up a permanent business.

Listen, any live druggist who will buy a ½ gal. of Vogue can make it a real factor to build up a profitable perfume business not only on Vogue but other odors

as well. The point is, a ½ gal. bottle Vogue will attract attention to the entire Perfume Department.

Cordially yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 22"

William R. Warner & Company.

Sales Department. Date Aug 6 1914

Subject POSSIBILITIES OF CLUB "C" OFFER.

Dear Traveler:

We are certainly getting enthusiastic about the Club "C" Offer because the more we study and analyze it, the greater the possibilities are.

In making a calculation, there is not a druggist in the United States, who can not use during the year, at least $100.00 worth of our combination, and as there are over 48,000 druggists in the United States, it would mean a business of over four million, eight hundred thousand dollars. When you calculate, there are nearly one hundred million people, that only means a consumption for each person of four and four-fifths cents worth of all the different medicines we manufacture per year, and you will all concede that this is a very small consumption compared with the amount they consume of the different medicines we manufacture.

In order to still assist you further in succeeding and placing the Club "C" offer, we authorize you, where you feel it is to the advantage of the druggist and of the firm of selling on the basis of:

One fourth of the invoice to be paid in 30 days
One fourth of the invoice to be paid in 60 days
One fourth of the invoice to be paid in 90 days
One fourth of the invoice to be paid in 120 days.

Under this arrangement, if the druggist will take an interest and put his push on the goods, he can simply run his business on our capital, for he can take

more than enough money out of the goods to make his monthly payment, and in that way, you can readily see he has no investment, but the secret of it is up to you, to enthuse the druggist by convincing him that he is losing money by not taking advantage of the liberal prices and terms, to make it possible to take advantage of Club "C" Offer.

You can readily see that the entire proposition is altogether in favor of the retail druggist and you as salesman, for you know that any druggist, who felt disposed to do it, could buy a large per cent. of his entire medicine purchases through us and in no way work any hardship on his customers.

Now when it comes to such items as Perfumes, he could sell ours exclusively without any disadvantage. He can also handle more than four-fifths of our line of pharmaceuticals and profit-paying patents.

By Club "C" Offer we mean any general assorted order over $48.00.

On receipt of this letter, make an effort to make the week commencing August 17th, a Special Club "C" Offer Week, for we feel it will work to your advantage in every way. It will prove to you, that no offer ever has been made to the retail druggist of the United States, that from every stand-point is as logical and profitable to the trade.

The sooner your eyes are open, the sooner you commence making extra commissions.

Cordially yours,
WM. R. WARNER & CO.,
H. Pfeiffer, Prest.

"O'Connell Letter No. 23"

Date Sep 10 1914

Subject Make Hay While the Sun Shines.

Dear Traveler:

SEASON:—

Yes, why certainly business is good. Why shouldn't

it be with our combination and the large variety of goods we manufacture and distribute? Besides, this is the best season in the year for business; the weather is pleasant, people are returning from their vacations, and druggists are planning to put in their winter supply and generally stocking up. But it is up to you boys, to take advantage of all these conditions and produce as many large orders as possible.

OUR PRICES:—

From the information we have, other pharmaceutical houses have advanced prices on many items that we have not advanced, and all of them standard sellers. We are trying to prove through you, to retail druggists that we are their friend and are going to avoid advancing prices on account of the war, as long as we can. The more you increase your business, the longer we can continue our old prices, as the increased business will, in a measure, absorb the increased cost of material. So you see it is important for you to demonstrate your samples thoroughly and explain to the retail druggist, the amount of money he is losing by not trading with us.

SIZE OF ORDER:—

Considering the season, there is no occasion for taking small orders, as you can not overstock any druggist in your territory on our Club C Offer, and the big advantage to the druggist is, the probabilities are the next time he buys, he will pay more money. So you see the druggist has everything to lose by not placing the order, but you must prove to him that our position is right in every way.

COMMISSIONS:—

This is where you come in. The more you take advantage of the present conditions, the more business you do by putting in six full days each week, looking for new customers that you never could touch before, and harvesting the orders that await you, the more

commission you will get. We are doing everything in our power to assist you, but it is up to you to do your level best in every way. We often feel that some of our men are not beginning to realize their possibilities. For instance, we have two men with adjoining territories; one salesman produces double the business of the other one, with the same line, same prices and same terms. We can only feel that the man who is not producing business is not onto his job.

Analyze yourself to see where your weakness is, and overcome it if possible. You can do it, if you try.

Yours for increased business,

WM. R. WARNER & CO.,

H. Pfeiffer, Prest.

"O'Connell Letter No. 24"

Date 10/8/14

Subject Seed That Grows.

Dear Traveler:

Stop and think.—Don't 80% of your sales consist of ITEMS previously sold and to DEALERS previously sold? That means every time you place a new item or sell a new dealer, you are sowing seed;—sowing seed that counts; seed that will produce from thirty, sixty, yes, a hundredfold, just in proportion to how thoroughly you have cultivated the soil, or in your case, how well you have demonstrated the possibilities to the new customer, or of the new item.

Think what this means. Every time you place a new item it automatically starts working for you, starts making business for your next trip. It becomes an industrious little business helper for you, and the more of these "little business helpers" you place the greater your possibilities. Really, your possibilities are as limitless as the sea. Isn't the wide ocean composed of little drops of water, and the great plains and mountains, of little grains of sand? Just so is our business composed of little helpers. In your and our case, these

little helpers are the various items we supply the different dealers we sell. Individually perhaps each isn't big, but collectively, what a grand total! Each unit is important. Make every one work for you. They are all at your service, ready and willing workers.

Analyze in your own way, the advantages of placing new items, of making new customers, of sowing this kind of seed. Figure out how these little helpers will increase your commission check. Then make your plans you have as a little helper, every item we supply, and every druggist and dealer in your territory. Doing so will make that commission check of yours so big, that you will hardly recognize it, but after you realize that it's yours, that it was your efforts that earned it, you will dance for joy.

To paraphrase,—Let the little helpers do your work.

Truly yours,
WM. R. WARNER & CO.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 25"

Date 12/10/14

Subject The Boys Ahead.

Dear Traveler:

Next to getting orders and collecting past due accounts, perhaps the most interesting thing right now is the Year End Prize, and we know you are all interested in knowing the progress made by the different travelers. As a matter of interest, we give below in rotation, the seven salesmen who have made the largest increase in dollars and cents; this doesn't necessarily mean that the same rotation holds good when figured on the percentage basis:

1. S. J. Nottingham
2. J. Ralph Emery
3. C. T. Dill
4. V. M. Moon
5. A. H. Klinka
6. C. S. Rogers
7. H. P. Johnson.

Those of you who were with us last year remember some of these names as head prize winners, which shows undoubtedly they liked the taste of last year's prize, and that in final analysis, is what enables the man to get more. To get some of this Year End Prize money, first you must want it and want it bad; second, you must put forth the effort to enable you to supply this want. There isn't a man on the force, who isn't able to win some prize money, if he will just make up his mind he is going to have it and then go after it with the right kind of effort and determination.

Remember your increase in sales for the period is compared with one month and not with 1½ times your monthly average. That means that you have a month and a half to make your increase. If it happens that you haven't shown any increase to date, that is no reason why you should be discouraged or give up. You still have the greater part of December before you, and while a good start is highly advisable, getting your second wind, and coming in strong on the home stretch is equally important. Remember from whatever standpoint considered, winning some of this Year End Prize money is to your advantage; 1st, the direct prize check; 2nd, the prestige this gives you; 3rd, the increase in your regular commission check; 4th, opening new accounts; 5th, bigger variety of goods with your present buyers; 6th, winning in what you set out to accomplish.

Make up your mind you will consider nothing but success in this Year End Prize Check, and remember the bigger the check you draw the better you please the house, and the higher your standing as a salesman.

With best wishes, we are,

Truly yours,

WM. R. WARNER & CO.,

G. A. Pfeiffer, Prest.

P. S. The above report is based on the last two weeks of November.

"O'Connell Letter No. 26"

Date 9/2/15

Subject Saleman's Letters.

Dear Traveler:—

In future you need not return Saleman's letters unless we especially request or you use for replying. Instead we suggest you file the letters containing special instructions or information for future reference, carefully destroying all others.

The purpose of Saleman's letters makes it necessary to give information regarding our goods and policies, and while they contain nothing that would compromise us in any way, they do contain data, etc., we do not wish our competitors to know. Your cooperation therefore in disposing of these to avoid their falling in the hands, of others, will be appreciated.

Truly yours,

Wm. R. Warner & Co.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 27"

Date 4/27/16

Subject May Prize Offer.

Friend O'Connell:—

Our interests are mutual—your ambition and our ambition is the same. We both are aiming to make this year 1916 show a substantial increase over the year 1915.

A year is made up of units—month units, week units, day units, hour units. The way to make the whole 1915 show an increase is to make each unit show an increase, from the smallest to the greatest. Every hour in every business day can be a factor in the success of 1916. The hour unit, though not large can not be ignored.

Successful hour units build up successful day units.

Successful day units build up successful week units.

Successful week units build up successful month units.

Now we are at the approach of a new month unit—May, 1916.

Let's pull together and make it a record breaker.

In view of having the advantage of the "Club G" Offer, we believed we can make the month of May show an increase over March, but of course, it is going to require had pulling on the part of each and every one of us to accomplish this result.

As an evidence of our appreciation of your special efforts for May, we will award you a prize of a total of 25 Gold bonds, divided as follows if married—15 Gold Bonds to you and 10 Gold Bonds to your wife; if unmarried, the Gold Bonds will be undivided. Award based on the following conditions:

That your personal sales during the month of May, of orders we accept for shipment, total $2,700.

Notice:—For each full $100.00 you add to this total, we will award an extra three Gold Bonds.

"Sales" as here used, means personal orders sold to retail druggists, physicians and general stores at regular trade prices—does not include special formulas, etc.; also does not include orders taken with deferred shipping dates.

In order to make every one of your business days in the month of May count on this offer, we will compile your total from the orders you actually sell in May from the first to the last, and which we accept for credit.

From every angle, it is to your advantage to win this May prize. If you win—and we feel you will—here's what you accomplish:

Improve your sales ability.

Collect that past due account, to insure new order being passed for shipment.

Lay foundations for future business.

Increase your and your family's interest in your work.

Increase your cash income for the month of May.

Increase your commission at the end of the year.

Write your name among the winners.

Prove yourself a success.

We have a big stock of Gold Bonds on hand—heres our best wishes that you win a pocket full.

Cordially yours,

Wm. R. Warner & Co.,

H. Pfeiffer, Pres.

This prize is on early Monday morning, May 1st. Plan to get a good start;—then keep it up.

"O'Connell Letter No. 28"

Date 5/11/16

Subject

Dear Traveler:—

Your mind is You, and my mind is me. The color of our eyes, or the size of our feet don't count—the mind is the thing.

Mind is another word for intellect, faculties, opinion, judgment, temperament, humor, disposition. Listen our minds are our whole works, and our minds are a power we can use to bring happiness and success.

Right now we are in the midst of the May Prize Contest. If you let your mind be convinced that you can win the prize set aside for you, and more, you surely will do it. Notice, I said surely. There is no chance about it, you can do it if you will.

Take my word for it, and put your mind at work on this thing. When a timid buyer talks about poor business, you'll convince him he needs your goods. When a know-it-all buyer gives you a cold shoulder, you'll prove to him that he must have your goods. You will turn defeat into victory. You can do anything with that mind of yours, if you will give it latitude.

Think positive—never negative.
Think constructive—never destructive.
Think success—never failure.
Do—Act—Work
Be a leader
Win the Prize.

You have the tools with which to do it. By this we mean, you have the territory; you have the customers; you have the goods, the offers, deals, etc., and you have our co-operation. It is all up to your mind.

Take your choice—win. I believe you will win, and I believe you agree with me.

Cordially,

H. Pfeiffer, Prest.

"O'Connell Letter No. 29"

Date 13/9/16

Subject New Edition Salesman's Confidential

Dear Traveler:

We are revising Salesman's Confidential. This booklet is intended for the salesman exclusively, and we want the new edition to be perfect. To help make it so, send us your suggestions of the additions and changes you would make if you were selected to superintend the revision.

The purpose of the Salesman's Confidential is to give information, which taken in connection with the Epitome, enables you to know your line and quote prices intelligently and quickly. The salesman's Confidential should be:—

1. Neat and legible.
2. Simple and concise.
3. Specific and clear.
4. Easy and quick of reference.
5. An answer to every question, either a salesman or customer might or will ask.

Your suggestions will help make it so. Send them in at once. We are now revising.

Truly yours,

Wm. R. Warner & Co.,
G. A. Pfeiffer, Treas.

"O'Connell Letter No. 30"

Date Sep 28 1916

Subject Matter

Dear Traveler:

This particular letter is primarily intended for our representatives who travel in the South, but we are sending it to everyone of our representativs, because the facts are interesting to those of you who travel in the North, as well as the South; besides, the present prosperity is not confined to the South—it is universal, north, south, east and west.

We received a letter the other day from a gentleman residing in the South, who keeps in close touch with farm conditions. The following is an extract:

"The South, as a whole, is in good shape—cotton crops short, but prices the Highest in over 20 years, and what is more, the Farmers are Getting the High Prices. The South will receive fully 200 million *more* for this cotton crop than for any previous crop. Lumber is also good marked, and *everybody employed.*

Kind regards, etc."

Gentlemen, you know how it is when things look dumpy. We picture to ourselves the big things that we would do if crops were good and the mills and factories running, etc.

Listen! That golden opportunity is here right now; there is no need of waiting for a better combination of circumstances under which to do business. Now is the time—now is the best opportunity most of us have ever had in our lives before, and may be it is a better one than we will have again for sometime.

This being the case, it most certainly behooves us to put forth our very best efforts and make every moment count for business.

All together, let's "reap while the reaping's good."

With best wishes.

Cordially,

Wm. R. Warner & Co.,
H. Pfeiffer, Prest.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ22. When Mr. Hagaman was travelling with you about how long did it usually take him to go through his lines?

A. Ordinarilly where he could get a man's attention from an hour to two hours. Sometimes a little longer.

XQ23. About how many items were there in all of his lines that he usually tried to sell?

A. That would be a pretty hard question for me to answer. There would perhaps be from five hundred to seven hundred items. There would be a great many more than that if you took the lines all through.

XQ24. Of these five hundred or seven hundred items were not most of them competitive goods with other houses?

A. Three quarters of them might be.

XQ25. And in respect of these your object as a salesman was to induce the druggist to take on your article in place of or in addition to the corresponding article of another house? Is that correct?

A. Why certainly it was my object.

XQ26. And you had at least five hundred items that you were especially pushing more or less which were matches to corresponding items and similar items, medicinally speaking of other houses. Is that correct?

A. I would not want to say, there may have been more and there may have been less.

XQ27. These were matches or similar medicinally to corresponding items of another house?

A. Yes, sir.

XQ28. Take the Warner Pill A. S. B. & I., which you said was "displayed to take the place of Lapactic pill by Sharpe & Dohme." When you got to this item what did you say to the druggist in order to induce him to buy your pills?

A. I displayed the sample that I had as a substitute for the Lapactic, which was the same weight, same color and same coating, and also the same formula.

XQ29. What I asked you to state is what you said to the druggest?

A. Simply as I said before I displayed these pills in my hand and told them where they could be substituted for the lapactic, they would get the same medicinal effects from the same formula that they would vice versa.

XQ30. I ask you again to state what you said to the druggist?

A. I said "Now here is a pill that we are making, at a good deal less price, same formula, and you can use it to replace the lapactic." That is the best I can answer that question. I sold a good many hundred thousand of them too.

XQ31. When you came to the item of your pill No. 541 which you have testified was displayed to take the place of a pill made by Parke, Davis & Co., called Alophen pills, what did you say to the druggest?

A. To the best of my knowledge on the price at the time for this pill mentioned we were getting at that time either $1., or a $1.25 a thousand where the original pill of P. D. & Co., was $2.25 a thousand and as a replacer, same formula, same shape. My object was to procure an order to demonstrate to the druggest that they could be used in the place of P. D. & Co.

XQ32. But what did you say to the druggist. Give your words as you did before in the other case?

A. I could not cover the question any more fully, I simply said that it was a substitute for the alophen pill P. D. and that it was a saving to the druggest in the price.

XQ33. You testified in answer to XQ30 in respect to what you said in selling your A. S. B. & I. pill that you said to the druggist, "You can use it to replace the lapactic." You now say that in trying to sell your pill No. 541 you said to the druggist that it was a "substitute for the alophen pill P. D." Do you mean to say that in selling the one pill you used the word "replace" and in selling the other pill you used the word "substitute."

A. What is the difference between a substitute and a replacer, they are both for the same purpose.

XQ34. When you were selling your Triloids against Lilly's Diamond Antiseptics, what did you say to the druggists? Give your exact words?

A. Well, in selling Triloids to the druggist the first point was the style of the bottle, the shape of the tablet and first the price which was so much less than Lilly's that they could be worked off at a larger profit than the original.

XQ35. Then when you sold your A. S. B & I. in competition you used the word "replace." When you sold your pill 541 you used the word "substitute." When you sold your Triloids in competition you used the words "worked off." Was that your practice? Or did you consider "worked off" the same as "substitute" and "replace"?

A. Yes, sir, I might have used the term to apply to any of the terms mentioned, using different tales talk at different times, depending upon the buyer that I had to handle.

XQ36. But always with the same meaning substantially?

A. Yes, sir.

XQ37. I take it that your main object was to demonstrate to the druggist the similarity of your article in each case to the article with which it was in competition. Is that correct?

A. Yes, sir.

XQ38. You were with the Warner house for three years. Was your sales talk substantially the same throughout?

A. Yes, sir.

XQ39. And it was the same as Hagaman's talk substantially, was it?

A. My talk has always been the same with my customers throughout. Hagaman's talk has changed, for the fact that Mr. Hagaman or the house had eliminated the Blue List and also that the trade are pretty wise at the present time about these different preparations.

XQ40. Were Warner's Triloids the same physical shape as Lilly Diamond Antiseptics?

A. As I remember them, yes, sir.

XQ41. Give me the shape of each.

A. They were three cornered shape tablets.

XQ42. That is you mean that Warner's were three cornered shape tablets?

A. Yes, sir.

XQ43. Now what was the shape of Lilly's?

A. As nearly as I remember they were the same.

XQ44. If Lilly's were triangular in section why did Lilly call them "Diamond" antiseptic. Is it not likely that Lilly's were diamond shaped?

A. I don't know why they did it.

XQ45. Are you absolutely certain that Lilly's were not diamond shaped in section, being called diamond?

A. I did not say they were not diamond shaped, I said they were the same style tablet as the Triloids, exactly, as I remember it, and the bottle was practically the same shape and style. I have seen enough of both to be able to draw them exact.

XQ46. Are not Lilly's tablets called Diamond tablets?

A. Yes, sir.

XQ47. And were they not diamond shaped in section?

A. Yes, sir.

XQ48. And were not Warner's Triloids triangular shaped in section?

A. Yes, sir.

XQ49. Have you a perfectly clear recollection of the shape, size and style of the respective bottles? Describe them? Describe Warner's bottle?

A. Both bottles held the same amount of tablets.

XQ50. Was not the Lilly bottle a little taller than the Warner bottle?

A. Not enough to be noticed at all.

XQ51. And was not the Warner bottle triangular in horizontal section while the Lilly bottle was almost diamond shaped in section, except that the front under the label was rounded slightly?

A. That was not my sales talk on selling them.

XQ52. I am asking you to describe the respective bottles and to say whether the Warner bottle was not triangular while the Lilly bottle was substantially diamond shaped?

A. That is right on the style of the bottle.

XQ45. And the Warner bottle was blue while the Lilly bottle was brown, is that correct?

A. Not always as I remember.

XQ46. What were the respective colors of the bottles as you remember?

A. As I remember the bottles that I had seen were always of a bluish color.

XQ47. By "bluish" do you mean "blue"?

A. Yes.

XQ48. And was the Lilly bottle brown in color?

A. That one in your hand is the first one that I remember ever having seen of that brown color.

XQ49. What colors do you remember as to the Lilly bottles?

A. The same as the Triloid bottles, the same color.

XQ50. Did not the Warner bottle have a red label with white lettering?

A. If I was to remember the color, the style of the bottle of every preparation and package out of thirteen or sixteen different companies this I could not do.

XQ51. Do not most of the large houses sell bichloride of mercury tablets?

A. Yes, sir.

XQ52. And are they not mostly put up in bottles that have some similarities but some differences?

A. No, sir.

XQ53. What shape of bottles are used by the other houses than those two houses we have been talking about?

A. Round bottle.

XQ54. Are bottles that are serrated on the edges common in the trade for poisons?

A. That is the only thing that I know of that are put up in that kind of a bottle.

XQ55. I take it, from your appearance and manner that you are an educated man and honest. Will you tell me whether you endeavored to sell Warner's Triloids to druggists by telling them that the shape of the bottle "compared pretty near the same as Lilly's which would give him a chance to push off and sell the Triloids in the place of Lilly's."

A. On account of the serrated side of the bottle and angular shape of the bottle I could not see under the methods that they were selling other goods of ours why this could not be done.

Q56. I ask you whether you in substance pointed out to the druggist the similarity of the Warner bottle to the Lilly bottle and told him that that would enable him to push and sell the Warner Triloids in place of Lilly's diamond antiseptics?

A. Yes, sir.

XQ57. And did you distinctly tell the druggist that they could impose upon their customers and pass off on them the Warner Triloids when they called for Lilly's Diamond Antiseptics.

A. Yes, sir.

XQ58. Do you think that that was honest?

A. On account of the style of the bottles and the same amount of corrosive that I could not see why it could not be done, and have in mind several cases in Massachusetts where I have sold to dealers after displaying the Triloid package grosses where there were one and three dozen buyers.

XQ59. I asked you whether you thought it was honest on your part to try to persuade your customers that they could buy Warner's Triloids and pass them off on customers who called for Lilly's Diamond Antiseptics. Will you please answer that question. I take you to be honest as I told you and therefore believe that that is not what you did.

A. As it seemed to be the style with other goods that I have testified in regard to here today and as Mr. Hagaman was demonstrating these tablets and other goods I used the same methods to produce business which the house demanded.

XQ60. If you tried to persuade your customers to buy your triloids and to pass them off on customers calling for Lilly's Diamond Antiseptics, tell me just what you said to your customers, giving your exact words?

A. I have repeated that about fifteen times, I will do it again if I can. Demonstrating the package to the buyer, the difference in price, and the package being so near as Lilly's, taking into consideration the difference in his profit I could not see why it would not be a good proposition to push these goods instead of Lilly's.

XQ61. In answer to Q15. in regard to Quin-Coco

you testified that you first demonstrated that there was no difference between it and Coco-Quinine and second that it was a good saving to the druggist, and third that you did not think that the "physician or patient could tell the difference." I ask you to state on the record the exact words in which you told the druggist that you did not think that the physician or patient could tell the difference beween those two articles?

A. Using as an illustration a druggist I have in mind in the State of Rhode Island, we compared Lilly's Coco-Quinine with Quin-Coco and in looking over the same by tasting, appearance of preparation we could not possibly detect the difference and through this I made a sale. My great fighting point on this as well as other preparations in the liquid form that I carried in my sample cases was to always show the druggist when I could where he could make more money than by using the original.

XQ62. In working this Blue List how did you work it?

A. I would go into a man's store and find out if I could what popular preparations he was selling, naming a few and compare in prices and what samples I had with me by demonstrating, and also compare the different makes, ours and the other fellows, and nine chances out of ten would get an order by using a little sales talk.

XQ63. When you were working for Warner and when you first started, did you have a copy of the Salesman's Confidential?

A. Yes, sir.

XQ64. Did you read it?

A. Yes, sir.

XQ65. Pretty carefully?

A. Well, I read it over a few times, yes.

XQ66. There was some business teaching at the end. Did you read that?

A. Yes, I think I did.

XQ67. Who was the first person connected with Lilly company to mention to you this controversy between Lilly and Warner?

A. The first I heard of it was through a letter I received while in the employ of the Wm. R. Warner & Co. The first person connected with the Lilly company to speak to me on the subject was Mr. Bradford. Mr. Bradford called on me at my home in Providence last summer and talked to me about this case. The letter I referred to as received from Warner and Company was one of the saleman letters that I have produced here this morning.

XQ68. Have you come all the way from Providence or New England to testify in this case?

A. I left my territory at Springfield, Mass., to come here to testify.

XQ69. Why did you do so? Was it not a loss to you?

A. Eli Lilly Company agreed that if I would come on here they would pay my expenses and also for my time lost.

XQ70. Did you part perfectly good friends with Warner & Co., when you left them?

A. In working for the Wm. R. Warner & Co., Mr. Pfeiffer the president of the company, seemed to think that I should produce more business, notwithstanding the fact that we parted in all good friends and that as I was taken sick with sugar diabetes I could not continue farther on account of the weight of the bag, and so I would not lose what commissions I had earned during the year I finished the year out. Now Mr. Pfeiffer during the year 1916 called me to their office at Philadelphia and wanted me to resign my position which I did, but continued the year out.

XQ71. When you travelled for Warner did you carry with you a demonstration book with labels pasted in it?

MR. BRADFORD: Objected to as immaterial.

A. Yes, sir.

XQ72. When you were trying to sell Quin-Coco to druggists did you tell them that they could refill their former prescriptions calling for Coco-Quinine with Quin-Coco?

A. Yes, sir. Also that it could be as I said before used as a substitute for Coco-Quinine. It was generally understood when a sample was displayed what it meant also for the druggist would not buy it only as a matter of making more money.

XQ73. What do you mean by "refilling his former prescriptions calling for Coco-Quinine with Quin-Coco?"

A. Why for instance if he had received a prescription and that prescription had been formely filled with Coco-Quinine and it was brought back to the store to be refilled he could use Quin-Coco in the place of Coco-Quinine.

XQ74. And you told all your druggists they could do that?

A. I did not tell them all that, no. Absolutely I did not tell them all that. But I did tell them that there was absolutely no difference between Coco-Quinine and Quin-Coco. I was not going into every store and using that because there are some druggists that won't substitute, but there was a whole lot of them that will. That is the truth of that story.

XQ75. I hate to think that you were dishonest with the dishonest druggists and only honest when dealing with the honest druggists. Is that the case?

A. It seemed to be a policy of the house to sell goods wherever they could be placed and as the line was demonstrated to me at the beginning through Mr. Hagaman in order for me to hold my position I had to use every means at my hand.

XQ76. Did you find dishonest means inculcated in the Salesman's Confidential?

A. Not that I can remember.

XQ77. You have produced here some twenty-five salesman's letters sent you by the house. Did you find any dishonest methods inculcated in those letters?

A. There is one there on that Garden Bouquet perfume. I will read from a letter of July 28th, 1915:

> "This record ought to make the traveler who hasn't sold a bottle of Garden Bouquet sit up and at least open his eyes to the fact that the traveler who doesn't know perfume *can not* be sold—sells it."
>
> "Do you know we are not beginning to get the perfume business our prices and offers entitles us to and as perfume is strictly a saleman's proposition, we can't for the life of us blame anyone but our travelers."

XQ78. Any others?

A. There is another one there in that bunch of letters that speaks about leaving the odor in the store, that has Garden Bouquet, that it means an order on the next trip to replace the Mary Garden.

I read from a letter dated Dec. 9, 1915, this paragraph—

> "Why is it that we can sell Mellier's Garden Bouquet at $4. per eight oz., while many other perfumers are getting double and more than double for a similar odor."

In a letter dated December 23, 1915, is this suggestion—

> "It will pay you to give Mellier's Garden Bouquet some careful thought, develop live selling plans, demonstrate the odor, get it on every order, and always include a supply of its twin Mellier's Vogue. They are both repeaters."

XQ79. Any others?

MR. BRADFORD: This line of questioning is objected to on the ground that the letters have been introduced in evidence and are available to the Court and are their own best evidence as to what they contain. The witness' opinion as to whether they are honest or dishonest is absolutely immaterial.

A. That is all I can think of.

XQ79. What was meant in your business by "repeaters?"

A. By "repeaters" I mean that if a customer should come to a store and had previously purchased Mary Garden the bottle could be refilled with Garden Bouquet and not be detected. I have known some druggists that would take a preparation known as burnt sugar or carmel and would use about one drop in a bottle just arrived to give it the identical color of the Mary Garden which the Garden Bouquet would have after standing a short time.

MR. RAWLE: The last part of the answer is objected to as volunteered and irrelevant and as not affecting the defendant.

XQ80. I do not want you to testify to something you do not mean. Do you not remember that by "repeater" is meant an article bought by a druggist that was so acceptable to him that the salesman would have no trouble on a subsequent visit in getting him to repeat his order for that article?

A. As I understand with my experience in the retail drug business and also as a salesman that a repeater or a repeated prescription is one that is brought back to the store to be refilled.

XQ81. That may be true as to a "repeated prescription" but is it not also true that your house in using the word "repeater" to its salesmen meant that the salesmen should so well satisfy the customer on articles sold to him that when the salesman came back

later on he would have less difficulty in another order for such articles. Is not that what your house meant by using the word "repeater"?

A. The term "repeater" as applied to an order is where you go back and get another order for the same thing, but the term that I have applied "repeater" to a prescription or perfume is where something else is sold in place of the original.

XQ82. Don't you mean that a repeater on a prescription is where the customer comes back and has the prescription refilled?

A. Yes, sir, and also where there may be a substitute used.

XQ83. Referring to Q12 did you analyze the pill that the chemist made up?

A. Simply by its color, appearance and shape, but analyze it I could not do it.

Deposition closed.

EDMUND FRANKS O'CONNELL.

Adjourned subject to further notice.

Indianapolis, Ind., December 3, 1917.

Met pursuant to agreement and notice.

Present:

MR. E. W. BRADFORD, on behalf of plaintiff, and

MR. FRANCIS RAWLE, on behalf of defendant.

It is also noted that MR. FRANK R. ELDRED, Chief Chemist for Eli Lilly & Company and LEWIS E. WARNER, Chief Research Chemist for Wm. R. Warner & Co., are present.

JAMES H. BEAL, a witness called by and on behalf of the plaintiff, having been first duly sworn deposes and says as follows in answer to interrogatories propounded to him by counsel:—

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. James H. Beal; age, 56; Urbana, Illinois; present occupation director of pharmacy research State University of Illinois.

Q2. Please state the character and extent of your education, work and experience that would qualify you to testify as an expert in cases requiring knowledge of chemical anl pharmaceutical subjects?

A. My first employment was that of a drug clerk; I had about seven years experience at Uhrichsville, Ohio, and at Akron, Ohio. The last four years of which was as head of the prescription and manufacturing department of what was one of the largest retail and prescription stores of Ohio at that time. My education in chemistry and pharmacy was gained at Scio College and Mount Union College, Ohio, and the University of Michigan. Shortly after my last graduation I became instructor in chemistry at Scio College, Scio, Ohio. Several years later was made professor of pharmaceutical chemistry and pharmacy at Scio College, and later dean of the School of Pharmacy of Scio College. I continued in that position for approximately twenty-five years. While in that position I was also elected to the professorship of theory and practice of pharmacy in the Department of Pharmacy of the University of Pittsburg, which position I held for approximately ten or twelve years with intermission of about two years. I retired from that position to accept the editorship of the Journal of the American Pharmaceutical Association and also that of general secretary of the American Pharmaceutical Association, which po-

sition I retained until my failure in health about four years ago. During my occupation at Scio and at Pittsburg I was also either one of the acting chemists or one of the consulting chemists of the Food and Dairy Department of the State of Ohio, doing such work as my other occupations would permit. For about a year I was chief drug inspector of the Food and Dairy Department of the State of Ohio.

My services at Scio and Pittsburg were concurrent except for about three years towards the close when I gave up my Scio position.

My services with the Food and Dairy Department of State of Ohio was also concurrent. I simply rendered such services as my college duties would permit.

Q3. What positions have you held, if any, in State or National societies or associations having to do with chemical and pharmaceutical work?

A. I am a member of the American Chemical Society, American Association for the Advancement of Science, the American Pharmaceutical Association, the United States Pharmacopoeia Convention and honorary member of a number of State pharmaceutical associations. I was president of the Ohio State Pharmaceutical Association; served on many of its committees, such as committee on adulterations and the practice of pharmacy. I have been president of the American Pharmaceutical Association; was chairman of the Council of the American Pharmaceutical Association for a number of years. I was general secretary of the American Pharmaceutical Association and editor of the Journal of the American Pharmaceutical Association for about three years. I am chairman of the Board of Trustees of the United States Pharmacopoeia. I have been chairman of that board since 1910. Prior to 1910 I was acting chairman for two or three years.

Q4. On the table before you are a number of ex-

hibits that have been introduced on behalf of plaintiff in this case, consisting of a bottle of Coco-Quinine, plaintiff's product, a bottle of Quin-Coco, defendants' product, a number of bottles of experiments known as "Bibbin's Experiments", a bottle of syrup stated in the evidence to be Coco-Quinine with the chocolate or cocoa omitted (Complainant's Exhibit, Bottle No. 1) and a bottle containing Coco-Quinine with the yerba santa omitted (Complainant's Exhibit, Bottle No. 2). I ask if you have had an opportunity to observe or examine these exhibits and if so to state the extent of the examination you have made and when it was made?

MR. RAWLE: The question is objected to as inadmissible and irrelevant and because the testimony sought to be brought out is part of plaintiff's case in chief and testimony on that subject was herein produced at the opening of plaintiff's case by Dr. Eberhard, J. K. Lilly, Dr. Thorburn and others. Also like testimony was introduced in rebuttal by Bibbins and this further testimony is irregular and inadmissible.

Notice is given of a motion to strike out the entire deposition with costs.

MR. BRADFORD: Counsel for plaintiff agrees that this objection may stand to the entire deposition with the same force and effect as if repeated following each question.

A. I first saw these exhibits on Saturday afternoon last. I have known of the existence of Coco-Quinine and Quin-Coco in a general way for some years but have not had any personal experience with their use. My examination has been confined to general inspection, tasting and smelling of the samples which are here on the table.

Q5. Dr. George M. Beringer, when called as a witness in surrebuttal on behalf of the defendant, stated the result of certain examinations he had made of

these Bibbins samples, and expressed his opinion in respect to each. In respect to Specimen No. 2, which I now hand you, he stated (in answer to Q30), that in his opinion the preparation in this bottle would not be pharmaceutically satisfactory, palatable, perfect, or marketable.

I ask you whether or not you agree with Dr. Beringer's opinion as expressed in this answer, giving in full your reasons for your answer?

MR. RAWLE: A further objection is noted that if the witness is asked to testify in reply to Dr. Beringer it is essential that he should base his testimony upon the same bottle contents as to which Dr. Beringer testified.

MR. BRADFORD: It is noted that at the beginning of the examination of Dr. Beringer, just prior to his answer to the question referred to, the record shows that the samples on which Dr. Beringer based his opinion were taken from the bottles now on the table by Mr. Pfeiffer and Mr. Rawle and counsel for defendant is therefore asked if his objection is intended to suggest any change in the preparations before Dr. Beringer examined them. If not it is believed that the objection is without point.

MR. RAWLE: I really do not understand what plaintiff's counsel has in mind. I, therefore, have nothing more to say.

A. In my opinion No. 2 is a quite satisfactory pharmaceutical preparation of quinine sulphate, so far as I am able to judge from its physical appearance, its odor, and taste. I would say that it is satisfactory so far as appearance is concerned, because I observe only slight tendency to a separation of the suspended solids. The odor is fairly agreeable, considering that the preparation contains, or is said to contain, fluid extract

of yerba santa. I would consider it satisfactory as to taste for the reason that to me no evidence of bitterness is present until after the preparation has been on the tongue for several minutes. I would not give it as my opinion that the preparation is a perfect one. I do not think a perfect preparation of a suspended salt of quinine has ever yet been prepared, but on the whole, in my opinion, this is to be regarded as a very fair and pharmaceutically acceptable preparation of a suspended salt of quinine.

Q6. Dr. Beringer when asked about the taste of this particular preparation (Q28) answered

"The taste was decidedly bitter."

I infer from your previous answer that you do not agree with his opinion in this respect.

(Same special objection.)

A. In my opinion it is not decidedly bitter. I do not obtain any bitterness at all until after the preparation has been in contact with the tongue for several minutes. It is too much to expect that any preparation of quinine sulphate in a suspended mixture will not produce the sensation of bitterness after it has been in contact with the nerve endings of taste in the mouth.

Q7. He also stated in answer to Q29 that the appearance was not that of a homogeneous or satisfactory pharmaceutical preparation. Will you express your opinion as to this answer?

(Same special objection repeated.)

A. In my opinion its appearance as to homogeneity is as good as any preparation of quinine sulphate suspended in liquids I have ever seen. If presented to me by one of my students as evidence of his ability to manufacture a suspended quinine preparation I would accept it as a satisfactory preparation.

Q8. I now show you Bibbins Sample No. 4, Dr. Be-

ringer testified respecting this sample in answer to Q41, as follows:

"It was not palatable. There was still another change which takes place in the presence of coffee, which was not shown in the other samples presented. Coffee contains caffe-tannic acid, which precipitates out part of the quinine, and I have no doubt that part of that sediment is due to part of the quinine precipitated out in that form of tannate, so that the quinine is subject to reactions in two different directions by this preparation."
Please state your opinion of this answer?

MR. RAWLE: It seems unnecessary to restate my special objection every time and I shall state it once for all.

A. In the first place I do not observe any sediment in this sample and do not recall having seen any sediment in this sample when I first saw the preparation on Saturday last.

The question of palatability is a relative one. A syrup might not be considered as palatable for use as a food when it would be considered as quite palatable in the case of a medicine which in some other form is very bitter or has an otherwise disagreeable taste. In my opinion this preparation can fairly be said to be more palatable than the average of liquid mixtures containing quinine sulphate in suspension.

In considering the question of palatability in my opinion the presence of caffe-tannic acid would be beneficial rather than otherwise. The less quinine sulphate there is in solution the less bitter the preparation will be.

Caffe-tannic acid would therefore tend to render the preparation less bitter than it would be if this compound were not present.

Q9. In answer to Q43 Dr. Beringer testifying in respect to this sample No. 4, stated

"In my opinion this specimen is not pharmaceutically perfect, but is unstable, not satisfactory, is not palatable and could not be successfully marketed."

Please state your opinion of this answer?

A. In my opinion so far as I can judge from appearance, odor and taste, this preparation can fairly be denominated as a satisfactory pharmaceutical preparation of quinine sulphate in a state of suspension. It is satisfactory in appearance, satisfactory to me in odor and in taste. I can see no reason why it should not be successfully marketed. There are many pharmaceutical preparations on the market much less pleasant in odor and taste that enjoy a wide repute and are largely used. The question of stability is one of fact which is best determined by an examination of the sample itself. I understand that this sample is approximately one year and eight months old and that it has been repeatedly opened and exposed to the air while portions of its contents were being removed from the container. A preparation of quinine sulphate in a suspended liquid, largely aqueous, which will endure this treatment without showing evident signs of deterioration can be considered as very satisfactory from the standpoint of stability.

Q10. I now show you Bibbins Sample No. 5. Dr. Beringer in testifying respecting this sample beginning in Q44 and continuing for several questions following stated that its taste was decidedly bitter; that there was decided evidence of precipitation on the sides of the bottle; that the sides of the precipitation consisted in part of the quinine separated out as well as part of the mucilaginous material; that it is not a suitable color for a pharmaceutical preparation; that it was not a stable or palatable preparation or one that could be successfully marketed. What have you to say respecting Dr. Beringer's opinions of this sample thus expressed?

A. The matter of color in a pharmaceutical preparation like that of flavor and odor is a question of taste. Some people admire green in a pharmaceutical preparation and others prefer some other color. I do not know of any fundamental superiority of one color over another. The separation on the surface of the bottle of this sample is not any greater than that of some of the other samples on the table and is materially less than in the case of some of these samples. I am unable to say from my observation that the separated particles on the sides of the bottle positively do consist of quinine sulphate and of the suspending material. Only a chemical or microscopical examination would justify a positive opinion in one way or the other. I do not observe any bitterness whatever in the case of this preparation until after it has been on the surface of the tongue for some period of time. In my opinion it is much more palatable than the average of liquid preparations containing quinine sulphate in suspension. I can think of no reason why a preparation of this character should not be marketable successfully. There are certainly numerous preparations on the market which have been successful and which are less palatable than this particular sample. I do not observe any sediment whatever in this bottle. The question of permanent even distribution in this or any other similar preparation is a question which can properly be determined only by a careful chemical examination of portions taken from different levels of the liquid after it has been permitted to stand on the shelf undisturbed for a considerable period of time. Judging from my experience it is not possible to prepare a liquid preparation of quinine in suspension which will never show any separation, provided the liquid is permitted to rest undisturbed for a sufficient length of time.

Q11. As to sedimentation and separation; compare the sample No. 5 with Coco-Quinine or Quin-Co-

co and state which shows the most judging from observation?

A. These samples speak for themselves. In both Coco-Quinine and in Quin-Coco there is plainly apparent a very much heavier deposit of solid matter on the sides of the container than is apparent on the sides of the bottle containing Sample No. 5.

Q12. Is or is not the same thing true of the other samples you have examined?

A. The same can be said of the other samples which I have had in my hands.

Q13. I now hand you Sample No. 6 and ask you to observe the same. Dr. Beringer in testifying respecting this sample, beginning in Q59 stated: That it was of uneven thickness and showed the separation of gelatinous like masses; that it was decidedly acid and quite bitter to the taste; that there were separated Irish moss jelly and quince-seed mucilage in different masses which were apparent even on the surface of the glass bottle as well as under the miscroscope; that in his opinion this preparation has so many defects that it would not be pharmaceutically satisfactory, would not be palatable, could not be successfully marketed and that not the least objectionable feature is the use of benzaldehyde as a flavoring.

Please express your opinion of Dr. Beringer's testimony respecting this sample thus summed up?

A. In the body of this liquid I do not observe any visible evidence of a separation of the quinine sulphate. On the surface of the bottle above the liquid I observe a heavier deposit of solid matter than is evident in samples 2, 4 and 5, but not nearly so extensive or dense a deposit as is shown in these two bottles of Coco-Quinine and Quin-Coco. I do not venture any opinion as to the nature of these separated portions on the sides of bottle No 6 above the surface of the liquid. I do not think their constitution could be determined positively except by either chemical or micro-

scopical examination. I can see no objection whatever to the presence of benzaldehyde as a flavoring agent. It is a flavor which is especially agreeable to me and is liked by a great many people. It would also be calculated to act somewhat as a preservative in this sample. Benzaldehyde is quite commonly used. It is the flavoring which we recognize in the cherry and in the peach and in various other stone fruits. It is the same as is commonly known as bitter almond flavoring.

Q14. As to the four samples Nos. 2, 4, 5 and 6, which you have testified about, how do they compare as to bitterness with the bitterness present in Coco-Quinine and Quin-Coco?

A. I cannot perceive a great deal of difference in the degree of bitterness of these six preperations. In every case there is some degree of bitterness after the preparation has been in contact with the surface of the tongue for some period of time. Based on my experience in the making of suspended quinine preparations, I would say that all of these can be considered as satisfactory from the standpoint of palatability. All the quinine preparations where the quinine sulphate is in suspension that I know of will cause a bitter taste after a period of contact with the surfaces of the tongue, and mouth.

Q15. Dr. Beringer was asked when he was testifying respecting Bibbins Sample No. 2 (XQ159), whether or not this was more bitter than Coco-Quinine. He answered "Very decidedly". What have you to say of this answer by Dr. Beringer?

A. I can perceive no evidence of greater bitterness in the one sample than in the other.

Q16. I will ask you a general question relating to the other six Bibbins samples before you, without asking you to go into details as to each, that is, as to Nos. 1, 3, 7, 8, 9 and 10. Did you on Saturday make any examination of these samples, and, if so, what conclusions did you reach respecting their respective merits

as pharmaceutical preparations? Bearing in mind particularly the efficiency of the suspending agent used and the character of the preparations as to appearance, smoothness and homogeneity?

A. I made the same examination of these as of the other preparations which I have spoken upon, that is, I observed their appearance to the naked eye, their color, flavor, and extent of deposit on the sides and bottoms of the respective containers. I observed a difference in these various qualities, that is, some are more agreeable in appearance as regards smoothness of the mixtures; some are more agreeable in odor, and some are less bitter in taste than other of the samples. As regards homogeneity, there is nothing in the appearance of any one of these samples to condemn them from a pharmaceutical standpoint. If these preparations had been submitted to me by a member of a graduating class in the college of pharmacy as evidence of pharmaceutical skill in the compounding of preparations containing quinine sulphate in a state of suspension, I would have accepted them as satisfactory so far as appearance and homogeneity are concerned. I find two of these Samples No. 1 and No. 9, in which the quinine bitterness is well disguised. The bitterness is fairly disguised in all of them. I would state that so far as palatability goes the worst tasting of these preparations is as good if not better than the average mixture of quinine sulphate in suspension dispensed extemporaneously on a physician's prescription. As regards appearance the samples speak for themselves. As regards evenness of distribution of the medicated agent throughout the liquid, as I stated previously, this can properly be determined only by a careful chemical examination. So far as their appearance to the naked eye is concerned there is nothing to indicate to me that there is more quinine sulphate in one part of the liquid than in any other part of the liquid.

Q17. Considered as experiments to make a phar-

maceutical of the character we are discussing, what have you to say as to the success of Mr. Bibbins in the production of these ten samples, considered as compared with ordinary pharmaceutical experience in making new preparations?

A. If I understand the question, his experiments can all be regarded as successful. Certainly none of these preparations could be classed as failures in the effort to make an active preparation of quinine sulphate in suspension in an aqueous menstrom. Some of the efforts are very much better than others. The distribution of the quinine so far as I can judge from the naked eye observation has been successfully accomplished in all of the samples. The principal differences I find in the matter of palatability. In samples 2, 4, 5 and 6, the bitterness of the quinine is well disguised. In samples 1 and 9 fairly well disguised, and in none of the samples is the bitterness of the quinine sufficiently apparent to condemn the preparation as a satisfactory pharmaceutical preparation.

The question of permanence in my opinion can be determined only by preserving the preparations for a sufficient length of time under ordinary conditions and then observing any changes which may have taken place.

Q18. Compared with usual pharmaceutical experience would you consider it satisfactory to obtain even four satisfactory results out of ten experiments in such a preparation?

(Objected to as irrelevant.)

A. I would consider four successful experiments out of ten in the case of such a preparation as eminently satisfactory.

Q19. Assuming that some of the samples have developed more or less bitterness since they were made is it probable or possible that by further experimentation in the laboratory such faults might be overcome?

(Same objection.)

A. Oh, yes, quite possible.

Q20. What is the significance to a pharmacist of a "shake well" label on a bottle such as you find on the neck of the bottle of Coco-Quinine and Quin-Coco before you?

A. This is a common and accepted practice among pharmacists in the case of liquid preparations containing solid matters in suspension, so as to insure an even distribution of the suspended matters throughout the liquid at the time of dispensing. In all such liquids the suspended matter is likely to separate more or less on long standing. I doubt if it would be possible to manufacture a preparation of this character which would not show some separation after standing for a long period of time.

Q21. Dr. Beringer when testifying for defendant (Qs. 81 and 82) was asked to state whether or not the quinine must be distributed evenly throughout the liquid in its natural or powdered state in order to constitute a successful and stable pharmaceutical preparation of a syrup of quinine. He answered:

> "The homogeneous suspension of the quinine is essential to the preparation of a pharmaceutically perfect tasteless quinine syrup."

What have you to say as to this?

A. If by his statement Dr. Beringer means that the quinine compound should be evenly distributed throughout the liquid I would be inclined to agree with him. If he means by his statement that the quinine must remain in the form of sulphate unchanged in order to make a bitterless or palatable preparation, then I am compelled to dissent from his answer. In my opinion it is not essential that the sulphate remain unchanged in order to make a palatable, active, pharmaceutically acceptable, suspended preparation.

Q22. Assuming that Dr. Beringer meant that the quinine crystals must remain evenly distributed

throughout the mixture, regardless of the length of time the bottle may stand, so that in administering from the bottle and without shaking the bottle, a uniform quantity of quinine would pour out with each teaspoonful, then what would you say as to his opinion?

A. I could not agree with that opinion. If Mr. Beringer's opinion as stated is correct then a successful and satisfactory preparation of quinine sulphate in suspension has never been prepared. In my opinion, as I have stated previously, there will be some separation on standing in all such preparations. That is perfectly well understood in pharmacy and medicine and it is to correct this settling out that the shake label is employed on such a large proposition of preparations.

Q23. Dr. Beringer was asked by Q95 to state if there is anything to be said about the use of three ingredients in any preparation where one would be equally good by itself. He replied that the use of two or more articles where one would answer the purpose is objectionable because prone to introduce two articles of different composition which may start decomposition *per se* between themselves or render one or the other subject to change. He added "As an example I may cite that it is well known that mixtures of oils become rancid much more quickly than the pure oils themselves."

Dr. Beringer was considering in this testimony the use of two or more ingredients by Mr. Bibbins in making up his samples in place of the cocoa or chocolate used in making Coco-Quinine and Quin-Coco.

Will you please express your opinion on this point?

A. Of course simplicity is always desirable in pharmacy as well as in mechanics. It does not follow however that we gain simplicity by the use of a small number of the named ingredients. In the example referred to we have in cocoa a comparatively complex

substance. It contains a number of distinct ingredients. A cocoa mixture in water without the addition of preservative substances would on standing at proper temperatures ferment and decompose. On the other hand we can frequently secure stability in a preparation by multiplying the number of ingredients. When we add a preservative which has no other function than preserving we are increasing in the number of ingredients. In other words whether a number of ingredients is desirable or not is a question which must be decided in each particular case by the conditions present.

Q24. In answer to XQ144 Dr. Beringer stated that he determined the degree of acidity in these various Bibbins samples by their reaction on lithmus paper. What have you to say about this as a test for acidity in these preparations?

A. In my opinion this is a very unsatisfactory method of determining degrees of acidity. Only within a very limited range of cases can lithmus be relied upon to show the comparative degree of acidity. Lithmus is properly used to determine the presence of acidity and not its degree.

The degree of acidity can properly be determined only by measuring the amount of alkali which a given weight or volume of the acid liquid will neutralize.

Q25. In answer to XQ146 Dr. Beringer stated "tragacanth swells practically indefinitely". What have you to say as to this?

A. If I understand Dr. Beringer's statement I can not agree with him. Tragacanth mixtures are commonly made in pharmaceutical laboratories. I think every pharmacist will agree that tragacanth will stop swelling as soon as it has reached full saturation. I cannot agree that it would continue to swell indefinitely.

Q26. In XQ147 Dr. Beringer was asked what acid is formed when tragacanth and quince-seed decompos-

ed. He replied that the acid is most likely acetic acid. What have you to say about the decomposition of tragacanth and quince-seed mixture.

A. Acetic acid may be among the substances produced in the decomposition. It seems to me likely however that other acids would predominate judging from the odor of decomposed mucilages. I have never examined decomposed mucilages chemically.

Q27. Is the odor of decomposed quince-seed readily detected?

A. Yes.

Q28. In any of the Bibbins samples do you find any evidence of decomposition or of fermentation or of "spoiling" by any other process.

A. No, I have not observed any such evidence of decomposition.

Q29. Would a mixture of chocolate and water ferment and decompose at ordinary room temperature?

A. It would unless some preservative were present.

Q30. In answer to Q85 Dr. Beringer stated that as to benzaldehyde as a flavoring it: "is subject to the very serious objection that it is apt to be oxidized, being reduced to benzoic acid and losing its flavor entirely, so this is accepted as a satisfactory flavoring for very few preparations indeed." What have you to say as to this?

A. I must object to the use of the words "oxidized" and "reduced" in the sense in which Dr. Beringer seems to have used them. They are words of opposite significance. When a substance is oxidized, oxygen has been added to it. When it is reduced oxygen has been withdrawn, or an equivalent change has taken place. It is true that benzaldehyde, in a partially filled bottle or in a bottle which is frequently opened and exposed to the air, will in course of time show some deposit of benzoic acid. I consider it quite improbable that such an oxidation of benzaldehyde would oc-

cur in a mixture filled with reducing agents such as seem to be present in this mixture No. 6. Even if it should all be oxidized to benzoic acid, which I consider very improbable the amount of benzoic acid produced could not be regarded as objectionable in this particular mixture. In my experience the flavor of benzaldehyde, or what is commonly known as bitter almond or cherry flavor is frequently used not only in the flavoring of such medicinal preparations as emulsions of cod liver oil but in popular beverages such as soda water.

Direct-examination closed.

Cross-examination without waiver of objections.

By Mr. Rawle:

XQ31. As these ten Bibbins sample bottles stand before you do you consider that they have been shaken well, or do you know anything about it?

A. I do not know whether they have been shaken prior to my seeing them this morning or not.

XQ32. What is your belief on the subject as an expert?

A. I cannot say that I have any belief, it depends altogether on whether the suspending agent is of such a nature as to permit a rapid subsidence of the suspending matter.

XQ33. Why do you say "rapid"?

A. Because if the subsidence was rapid it would manifest itself on the table where we could see it.

XQ34. As they are now were they so when you first saw them on Saturday?

A. As nearly as I can perceive they are practically the same. I observe no difference at this time.

XQ35. I understood you to say that your work in life or at all events in late years has been largely or chiefly teaching work. Is that correct?

A. My principal occupation has been that of teach-

er or professor of pharmacy say for from twenty to twenty-five years.

XQ36. Has your attention before this last Saturday been called specially to sweet quinine syrup preparations?

A. No, not specially, but the manufacture of suspended quinine preparations is one of the usual problems submitted to classes of pharmaceutical students. We consider the successful preparation of mixtures of this class as evidence of having profited from the instruction received in the college of pharmacy.

XQ37. You have been sitting at the table with twelve bottles before you, ten of them Bibbins bottles and have tasted most of them. This tasting is rather a new thought to me. Is it not true that the taste lingers for some time and that accurate tasting, to be accurate, between two drugs should be separated by an interval of some length, perhaps an hour?

A. It is true that by the successive tasting of bitter mixtures the delicacy of the sense of taste becomes more or less blunted and that for the most delicacy of the sense of taste some interval of time should elapse when it is desired to distinguish between mixtures having closely similar tastes. I have tried to meet this in some respect by frequent washing of the mouth with water. I can only say that I have expressed my sensations to the best of my judgment in each case.

XQ38. But you would consider that your "sensations" would have been truer if you had allowed a greater interval between the tasting?

A. Undoubtedly the sense of taste would have been more delicate.

XQ39. And is it not true that you tasted a number of these preparations one after the other with a slight interval only and only with the use of water between tastings?

A. I tasted these several preparations as they were handed to me for that purpose and washed out

my mouth with water before tasting in every case in which I expressed an opinion.

XQ40. In your answer to Q21 you say that in your "opinion it is not essential that the sulphate remain unchanged in order to make a palatable, active pharmaceutically acceptable suspended preparation". Please explain further?

A. If I understand your question the only explanation I can add is that by remaining unchanged I meant to say that it is not essential that the quinine sulphate should continue as quinine sulphate in the preparation. It might have been converted to tannate or to some other form by the other ingredients and the preparation still remain practically bitterless or at least palatable.

XQ41. But if it passes into some other compound is it not necessary that it should be an equally insoluble compound?

A. That would depend in a large measure upon the other associated ingredients.

XQ42. If the quinine passes into solution will the preparation then continue to be a pharmaceutically acceptable preparation?

A. If the quinine passes into solution the mixture would leave the class of suspended preparations.

XQ43. Then if the sulphate changes is it not necessary that it should not change in the direction of solution in order that the preparation should remain pharmaceutically acceptable.

A. If the solution is equally palatable because of the associated ingredients I can see no reason why it should be considered less acceptable than when the quinine is in its solid form.

XQ44. Is it not true that chocolate or cocoa is in the drug business a common and very well known suspending and flavoring agent?

A. It is.

XQ45. In your answer to Q9, in speaking of Bib-

bins Bottle No. 4 you say that "there are many pharmaceutical preparations on the market much less pleasant in odor and taste that enjoy a large repute and are largely used". This might easily include a preparation of asafoetida. Will you please state what preparations you had in mind when you so spoke.

A. I did not have any specific preparation in mind but it would be easy to give examples of such preparations, for example elixir of iron, quinine and strychnine phosphates, the various syrups of iron, quinine and strychnine phosphates, quite a number of mixtures of the U. S. Pharmacopoeia, such as Brown mixture, syrup of squills and so on. All of these I have mentioned would in my opinion be more objectionable in taste than the particular sample I was then examining.

XQ46. In your answer to Q16 you said that so far as palatability in these Bibbins samples the "worst tasting" of these samples is as good if not better than the average mixture of quinine sulphate in suspension dispensed extemporaneously on a physician's prescription. What had you in mind when you made this comparison and how could you have possibly any such broad knowledge of filling prescriptions as you there assume to have?

A. To the first part of that question I had in mind such prescriptions as physicians frequently write where they prescribe the quinine, the suspending agent, the flavor, and the vehicle, and the preparation is extemporaneously compounded by the pharmacist.

To the second part of the question it is the business of one who teaches the compounding of prescriptions to familiarize himself as much as possible with the nature of prescriptions of the period today. It has been the principal part of my business for many years to teach students the art of compounding and the filling of prescriptions. As a part of this instruction sample prescriptions were sought in medical and phar-

maceutical literature and obtained by the examination of prescription files in drug stores. Every professor of pharmacy receives frequent requests for advice from the druggists of his community as to the compounding of prescriptions especially those of a difficult nature. It is customary in such cases when the professor is not able to answer the question submitted from his own information to attempt to solve the problem by practical experiments in his laboratory. I am the author of a book devoted to the special subject of prescriptions and compounding which has passed through two editions and which is now out of print and of which I am now preparing a revised edition. The title of the book was "Prescriptions and Compounding," in the first edition. In the second edition it was known as "Magistral Pharmacy".

XQ47. I assume that the druggists referred to in the first part of your last answer commonly uses such suspending agent, flavoring agent and vehicle as he deems best in connection with a prescription for quinine sulphate. Is that correct?

A. Yes, when the physician fails to prescribe these ingredients and the nature of the prescription indicates that the druggist is expected to make use of his technical knowledge.

Cross-examination closed.

Re-direct-examination.

By Mr. Bradford:

RDQ48. You were asked by counsel for defendant if your attention had been called specially to quinine syrup preparations. Have you any knowledge of certain experiments conducted by a committee on revision of the National Formulary on this subject?

A. My information is confined to that contained in the report of the National Formulary Committee and to expressions I have heard made by one or more members of that committee.

RDQ49. Dr. Beringer in his testimony expressed the opinion that it was entirely proper for that committee if it could to duplicate the formula for example of Coco-Quinine, or any other successful specialty of a manufacturing house, and publish that formula in the National Formularly. Have you any opinion on this subject and, if so, will you state it?

MR. RAWLE: Objected to unless the question specifies whether the opinion is to be legal or ethical or what.

MR. BRADFORD: The witness is advised that the question contemplates an answer based upon the ethics of the profession or business.

A. That is a delicate question for me to answer. I give it as my personal opinion and belief that the framers of the National Formularly are justified in including in that volume formulas which are equivalent in therapeutic effect to successful proprietary specialties. I do not consider it justifiable to simulate or imitate in National Formularly preparations successful specialties to such an extent that they might be palmed off on the innocent purchasers or physicians when he desired to obtain the original proprietary specialty. It is admittedly wrong for a pharmacist to substitute one of his own preparations in a prescription when it is evident that the prescribing physician intended the preparation of some particular manufacturer, putting such a formula in the National Formularly would not make such a practice correct, if it would be incorrect when practiced by an individual.

RDQ50. Is it in your judgment ethical practice for one manufacturer to duplicate a successful preparation of another manufacturer not only in therapeutic value but also in physical appearance and taste so that his preparation may be substituted for the preparation of the original manufacturer?

MR. RAWLE: Special objection made to question as irrelevant and immaterial and calling for opinion evidence on a moral question, which is for the Court.

A. If his intentions are to make a preparation which he believes can be successfully palmed off for the preparation of another manufacturer then I would consider such action as quite unethical.

RDQ51. On the subject of tasting—you tasted these Bibbins samples on Saturday as I recall. Were the results of your tasting today the same as those obtained Saturday?

A. Yes, as nearly as I can determine.

RDQ52. For reliability in comparing the taste of one preparation to another which method would you consider the most efficient, to taste one preparation and then wait for a sufficient period of time for the result of that taste to entirely disappear from the mouth before tasting the other, or to follow the method which you followed today and taste at comparatively frequent intervals, washing the mouth between tasting of each sample?

A. I am in doubt as to which would yield the most accurate results. In tasting the mixtures successively one has the advantage of a recent memory of the sensations produced. If tasted at large intervals apart one should taste each preparation a sufficient number of times to create in his mind a distinct memory of the sensation produced before he attempted to compare it with the taste of another substance.

RDQ53. Do you consider it an advantage or a disadvantage in such a preparation for the quinine sulphate to be changed into tannate?

A. Where the intention is to produce a bitterless preparation I think some advantage would be gained by such a change.

RDQ54. What pharmaceutical preparations are

you acquainted with in which chocolate or cocoa is used as a suspending agent?

A. Cocoa and chocolate are frequently used in pharmaceutical preparations, such as physicians' prescriptions and in proprietary specialties, but I believe they are more commonly used for the purpose of flavoring or as coatings for tablets and pills than as suspending agents.

RDQ55. What proprietary specialties in liquid form are you familiar with in which cocoa or chocolate is used as a suspending agent?

A. At this moment I only recall the name of two liquid quinine preparations of proprietary character which contain chocolate as the suspending agent. These are Coco-Quinine and Quin-Coco.

Re-direct-examination closed.

Re-cross-examination without waiver of objections.

By Mr. Rawle:

RXQ56. Then you do not know that there are five or ten other such preparations on the market, do you, and so testified to in this case?

A. I am aware that such preparations are to be found in the price lists of manufacturers, but I do not recall their particular names.

RXQ57. Are not chocolate or cocoa quite frequently used in connection with various drugs for suspension purposes?

A. I think they are mainly used for the purpose of flavoring and coloring. The suspending powers of chocolate are not equal to many other well-known substances. The nature of the suspending agent employed will of course vary with the character of the substance to be suspended. As to what may be the best agent in a particular case must be determined by experiment.

RXQ58. If a formula were discovered satisfac-

tory to the officials or committee in control of additions to the National Formulary or to the U. S. Pharmacopoeia, is it your opinion from the knowledge you have on the subject, that such formula would be incorporated into one or the other of those standards and so be thrown open for common use?

A. That is a matter which would rest entirely within the discretion of the respective revision committees of these two books. As a matter of fact a majority of the medicaments used by practicing physicians in their daily practice are not to be found either in the National Formulary or the United States Pharmacopoeia. They are very largely proprietary specialties. The important drugs in such specialties may be recognized by the National Formulary or Pharmacopoeia, but the particular form in which they are exhibited very frequently differs from the forms given in these two official volumes.

RXQ59. But I thought you said that the addition to one or the other of these standards of an approved formula for a chocolate syrup of quinine had been under consideration by the committee for some years, did you not?

A. It is my understanding that such a formula has been considered. My understanding is based upon information contained in circulars of the National Formulary Committee. I do not assert the correctness of my information. I do not know it as an absolute fact.

RXQ60. If such a formula were put into such a standard would it not be thereby standardized for common use?

A. In so far as the Formularly is capable of establishing a standard, it would be. The same is true of the U. S. Pharmacopoeia.

RXQ61. And in such a case the preparation made under this standardized formula could be put on the market by any drug house under the appropriate

standard name, provided the labels on the container made it clear to the purchasers as to the particular drug house which manufactured it?

By MR. BRADFORD: Objected to unless the question makes it clear as to whether opinion is asked as to the ethical or legal aspect of the case.

A. It seems to me that this is a question of law rather than a question of ethics. I would prefer not to express any opinion on that point.

RXQ62. Referring to RDQ50 do you not know that thousands of drugs which are similar in therapeutic value and in physical appearance and taste more or less are put on the market by various drug houses in competition with each other so that the preparation sold by one house could easily be passed off by a dishonest druggist for the preparation of another house? And do you not know that the whole drug business is based upon an active competition in the manufacture and sale of similar and competing goods?

MR. BRADFORD: Objected to as immaterial and as not cross-examination.

A. I am aware of the fact that some manufacturers put out preparations which are apparently intended as imitations of the preparations of other manufacturers. I do not know how many such cases exist. I do not consider such a practice as representing good professional ethics.

RXQ63. How many drug manufacturers sell some brand of mineral oil for internal use such as Squibb's Petrolatum?

Objection repeated.

A. I do not know.

RXQ64. Do you not know that there are at least twenty-five such houses?

Same objection.

A. I have never made any attempt to count them.

RXQ65. Do you or do you not believe that a large number of the drug houses put out such an article?

Same objection.

A. I am aware that there are a number of such preparations or forms of this preparation. I do not pretend to know the proportion as compared to the whole number of manufacturing pharmacists and wholesale druggists.

RXQ66. Assume there must have been one house that was the first to put out such a mineral oil preparation and that the other houses put out a similar preparation. On that assumption do you consider such a practice as not representing good professional ethics on the part of the other houses?

Same objection.

A. In the case of liquid petrolatum we have a distinct chemical entity having well-known poperties. It could hardly be said that a second brand of this chemical entity put out in distinctive form can be regarded as an imitation of the first one. In the particular case stated I would not consider it a violation of professional ethics for two or more competing houses to deal in the same drug each one sold under a distinctive title and label. The sin in my estimation in these cases is where one manufacturer designs his preparation purposely, that is gives it purposely such a form as to render it liable to be mistaken for the preparation put out under another brand. It is simply a question of professional and commercial honesty. If the practice is not honest it is not good ethics.

RXQ67. Then do you consider from your standpoint of the business that if a drug house mixes two or three chemical entities and market it that drug house has the monopoly of mixing those two or three chemical entities and marketing them no matter how

clear the label is on the container distinguishing the two products?

MR. BRADFORD: Objected to for the reasons before given and for the further reason that it calls for legal opinion.

A. Not necessarily so. Any one accustomed to dealing with the public is aware of the fact that the purchaser relies more on the appearance and other characteristics of the preparation than upon the label.

RXQ68. But if the two or three chemical entities when mixed necessarily produce a given appearance and characteristic of the product who is responsible for that fact, nature or the drug house?

Same objection.

A. Nature is responsible for the reaction produced. The drug house is responsible for the discovery of the reaction and of the combination.

RXQ69. Take Listerine. Is that what you call a proprietary specialty?

Same objection.

A. Yes.

RXQ70. Is it not true that a whole lot of the drug houses make a similar preparation and compete with Listerine?

Same objection.

A. In so far as they attempt to simulate in their preparations the character of Listerine to such an extent that the purchaser may be deceived, the practice is a bad one in my estimation.

RXQ71. Pardon me, but do you not observe that you have not answered my question, and that possibly your answer as given might be subject to the criticism of being a little partisan?

Same objection.

A. I answered the question in the sense in which

I understood it. Referring to the question once more I will say that it is my understanding that various houses do put out preparations similar to Listerine and possibly the same as Listerine compositions. I can see no ethical objection to this form of competition provided there is no desire or attempt to create confusion in the minds of the purchaser, or to deceive him as to the origin of the preparation.

RXQ72. Now is it not true that a very large number of drug preparations, pharmaceutically similar, are put on the market by numerous drug houses in competition to each other. I place emphasis on the words "very large number."

Objected to as entirely immaterial and irrelevant.

A. I believe that is true. I can see no objection to competition as long as it is honest, and carried out in good faith.

RXQ73. And is it not true, in your opinion that as to any of these preparations a dishonest druggist, if there be such on the earth, could manage to pass off the preparation of one house when that of another house was called for, the two preparations being similar pharmaceutically?

Same objection.

A. It is unfortunately true that some druggists dishonestly substitute one preparation which yields them a greater profit for another which they have reason to believe is the one desired. This practice is entirely indefensible and I believe that manufacturers in putting out their preparations, provided they are of a character known as specialties, should, as far as possible, give them distinctive character, color and flavor in order to discourage dishonest substitution on the part of a druggist who may be unscrupulous.

RXQ74. Do you consider that this bad practice

is more reprehensible ethically speaking in the case of what you call specialties than in the case of ordinary standard chemical entity drugs, assuming that the compared specialties are pharmaceutically similar?

Same objection.

A. It is a question of the intent to deceive. If the physician orders specifically a given brand of salicylic acid he has the right to expect that he will receive that particular brand and no other, and any attempt to substitute another brand without the physician's knowledge or consent is in my estimation unethical and dishonest. If they are sold on their own merits I can see no ethical objection whatever to any one placing on the market a competing article.

RXQ75. You will observe that you have not answered my question. I repeat it.

Same objection.

A. I want to answer your question, but to answer it in such a way that my intention may not be misconstrued. If the practice is dishonest in the case of a chemical entity the ethics of the transaction is on the same grade as the same practice in the case of complex mixtures.

RXQ76. Then as a teacher of pharmacy for many years and a trainer of probably hundreds of young druggists, you firmly believe that it is an exceedingly immoral act for a dispensing druggist to pass off one drug or preparation on a customer whether over the counter or to one holding a physician's prescription when another drug or preparation is called for, and you have so taught your pupils since you have been responsible for their ethical training, is that correct?

Same objection.

A. Decidedly so, unless the customer's consent has been obtained to the substitution.

RXQ77. Is it not your opinion that any druggist

who so practiced and has come to be known as so practicing would probably or certainly speedily break up his business?

Same objection.

A. In the case of a retail druggist I feel sure it would injure him greatly.

RXQ78. On your last Saturday's tasting of these twelve bottles before you did you make any note of the results or carry it in your mind or on the tip of your tongue?

A. I carried the matter simply in my recollection.

RXQ79. If you had to pass upon the relative taste of twelve preparations and your life should depend on your decision, which method would you adopt, the taste and wait method or the taste and wash method?

A. It would depend upon the immediateness of the danger. If the danger were close or immediate I naturally would decide as rapidly as possible. If I had plenty of time I would repeat my tests as frequently as the length of time permitted.

RXQ80. Then if your possible executioner should give you all the time you wanted but insist upon your pursuing one plan or the other to which plan would you be willing to trust your continuance in life?

A. In such a case I think I would try both plans and make up my mind as to which seemed to me to be the most accurate. We are here dealing with sensations. And the sensation of taste is one that is easily deceived, if the difference between the substances tasted is very slight. In some of these preparations which I have tasted there seemed to be practically no difference in the degree of bitterness. Such difference as appeared being due to the different flavors employed.

RXQ81. (RXQ80 repeated.)

A. I have not devoted sufficient attention to this

particular point to be able to give any positive opinion. I think either method would enable me to reach a fairly satisfactory conclusion.

Deposition closed.

J. H. BEAL.

CHARLES E. CASPARI, a witness called by on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Charles E. Caspari, age 42, St. Louis, Mo., chemist.

Q2. Will you please state the extent of your education, work and experience whereby you are qualified to testify as a witness in cases requiring knowledge of chemical and pharmaceutical subjects?

A. I received my training in chemistry at Johns Hopkins University, having graduated there with the degree of Bachelor of Arts, in 1896 and that of Doctor of Philosophy in 1900. Immediately thereafter I taught organic chemistry for one year at Columbia University, New York, and then went to the Mallinckrodt Chemical Works of St. Louis as research chemist in organic chemistry where I remained two years. In 1903 I accepted the position of professor in chemistry in the St. Louis College of Pharmacy and still retain that position. During the last fifteen years I have been until two years ago chief chemist for Meyer Brothers Drug Company, and am at present acting in that capacity for the J. S. Merrell Drug Company, both of St. Louis. Also during this time I have been called

upon frequently to examine numerous chemical and pharmaceutical products.

Q3. Of what associations are you a member and have you been connected with any committees or in any other official capacity with work having to do with chemical and drug affairs of this country?

A. I am a Fellow of the American Association for the Advancement of Science, a member of the American Chemical Society of which I have been Counsellor, a member of the American Pharmaceutical Association, and several times a member of its council. Also have been chairman of its scientific section, and I am a member of the present revision committee of the United States Pharmacopoeia.

Q4. Have you had any experience in testifying as a chemical expert in cases of litigation? If so please state?

A. Yes, I have testified on a number of occasions as a chemical expert in cases involving drugs, pharmaceuticals, patent medicines, foods, and chemicals.

Q5. On the table before you are a number of bottles which have been introduced as exhibits in this case. One is a pint bottle of Coco-Quinine, plaintiff's product; another a pint bottle of Quin-Coco, defendant's product. There are also ten bottles each of which contains a sample of an experiment made by one of plaintiff's chemists, a Mr. Bibbins, and they have been introduced as exhibits and marked "Plaintiff's Exhibits, Sample Syrups Nos. 1 to 10," respectively.

In the testimony they are commonly referred to as the Bibbins' experiments or Bibbins' samples.

We also have another bottle marked Complainant's Exhibit, Bottle No. 1, shown by the evidence to contain plaintiff's product Coco-Quinine except that the one ingredient cocoa or chocolate is omitted. Another bottle marked "Complainant's Exhibit, Bottle No. 2, shown by the evidence to contain plaintiff's product except that it has no yerba santa in it.

I ask you if you have examined these several exhibits and the character of such examination and when it took place?

By Mr. Rawle: The question is objected to as inadmissible and irrelevant and because the testimony sought to be brought out is part of the plaintiff's case in chief and testimony on that subject was herein produced at the opening of plaintiff case by Dr. Eberhard, J. K. Lilly, Dr. Thorburn and others. Also like testimony was introduced in rebuttal by Bibbins and this further cumulative testimony is irregular and inadmissible.

Notice is given of a motion to strike out the entire deposition with costs.

By Mr. Bradford: Counsel for plaintiff agrees that this objection may stand to the entire deposition with the same force and effect as if repeated following each question.

A. I first received samples of these exhibits about the first of October, 1917, here in Indianapolis and took them with me to St. Louis where I made an examiation of them between that time and the end of last week. This examination covered a comparison of these various samples as to taste, with Coco-Quinine and Quin-Coco; also a comparison as to the homogeneity and also as to viscosity and acidity.

Q5. Dr. George M. Beringer, when testifying as a witness in sur-rebuttal for defendant in Philadelphia on June 8, 1917, gave the result of his examination of specimens of these exhibits and his opinion as to the pharmaceutical acceptability of each, and as to their comparative merits when considered in comparison with Coco-Quinine and Quin-Coco. In answer to Q8 he stated that they were examined as to their acidity and as to the test for acidity he took five cubic centimeters of the specimen, shook this up with ten cubic

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centimeters of distilled water, after allowing the sediment to subside that he tested the supernatant liquid with lithmus paper. He stated that these ten specimens were all examined in the same uniform way.

I will ask you first what you have to say as to Dr. Beringer's acidity test applied to these samples and the value of such test in determining the degree of acidity of each?

A. The method used by Mr. Beringer is satisfactory only in so far as it determines whether or not any one of the samples is acid in reaction. For comparative purposes the method is utterly worthless, and it is impossible by means of lithmus paper to compare with any degree of accuracy different strengths of acid solutions.

Q6. Dr. Beringer in his testimony respecting the several Bibbins' samples testified that they were very bitter, or decidedly bitter and that he accounted for this bitterness by the acidity which he testified was present in each preparation. What have you to say as to this?

A. There may perhaps under certain conditions be some connection between acidity and the presence of a bitter taste, but apparently in the case of these ten Bibbins samples as well as of Quin-Coco and Coco-Quinine the relationship between acidity and bitter taste does not exist for the reason that all the ten Bibbins samples as well as Coco-Quinine and Quin-Coco are distinctly acid, yet Quin-Coco and Coco-Quinine are free from bitterness as are also some of the Bibbins samples. I can conceive that if quinine sulphate is partly dissolved in water and by means of a relatvely strong acid more of the salt is made to pass in solution the bitter taste may be increased, and yet there is a limit to the sense of bitterness which the nerve ends of the tongue and mouth can register. On the other hand if quinine sulphate is partly dissolved in such complex mixtures as are represented by the

samples in question I know from experience that the presence of acid does not increase the bitterness, especially if the acid is what might be called a weak acid. So that no conclusion can be drawn as to the relationship between acidity and bitterness in composite mixtures of several ingredients from the relationship that exists between acidity and bitterness in the case of quinine sulphate and plain water.

Q7. In answer to Q83 Dr. Beringer testified that Quin-Coco and Coco-Quinine are both neutral; that is, free from acidity. In answer to XQ200 he testified that he made this determination by the same tests that was applied to the Bibbins specimens as related in a previous question.

What have you to say as to this testimony of Dr. Beringer?

A. I cannot possibly understand how he obtained such results as I have made tests, using his identical method upon the original packages of Coco-Quinine and Quin-Coco which I purchased in the open market in St. Louis and both of which I found to be distinctly acid. As a matter of fact it would be quite natural to suppose that they would be acid as it is a general rule that all vegetable extracts have an acid reaction.

Q8. In answer to Q23 Dr. Beringer stated in testifying about Sample No. 1 that the acidity is due to the rapidity with which the mucilage of quince seed deteriorates and in answer to Q24 that this acidity developed in the specimens brings out the bitterness of the quinine perceptibly.

What have you to say of this?

A. If mucilage of quince seed had undergone decomposition it might perhaps produce a very weak acid which may perhaps have increased slightly the bitterness of the quinine. But there is no evidence in Sample No. 1 that any decomposition has taken place.

Q9. In answer to Q14 Dr. Beringer stated that probably Mr. Bibbins had not given attention to the

aspect of the problem before him that involved the knowledge that quinine suspension is entirely different from purely a mechanical problem of distributing an oil or a fat or suspending an inert powder in suspension.

What have you to say to this?

A. In the first place the suspension of the quinine has nothing to do with the bitter taste. The only reason for suspending the quinine is to insure uniform distribution throughout the mass of liquid and thus insure proper doses of quinine when the liquid is dispensed. As far as Mr. Bibbins having taken cognizance of the special problem of suspending quinine as against suspending anything else, I disagree with Mr. Beringer entirely as there is no special problem involved. The distribution of the quinine is purely mechanical and may be accomplished in a number of different ways.

Q10. In answer to Q's 16 and 17, Dr. Beringer stated that he considered the requirements of the suspending material to be that it must produce a uniform homogeneous liquid that does not separate out; that does not undergo subsequent change; that is not acid when first prepared and does not become acid on keeping, and that remains permanently as a uniform homogeneous suspending liquid even after keeping for some time as necessarily would be done in a package offered in the trade.

Please express your views respecting this testimony?

A. Mr. Beringer is partly right and partly wrong. The object of the suspending medium is to suspend the quinine uniformly and make a homogeneous liquid which shall not separate in a reasonable time, but I know of no suspended matter which will not ultimately separate if allowed to stand long enough but if his criterion is applied to Coco-Quinine and Quin-Coco

then neither of them is a good preparation, because both are acid and both separate on standing.

Q11. In answer to Q20 Dr. Beringer testified that in a number of the Bibbins specimens conditions existed showing that the quinine crystals had partly undergone solution, stating "in one specimen the quinine was practically entirely dissolved, in the others more or less so." In your examinations did you find any evidence that the quinine crystals had gone into solution in any of these Bibbins samples?

A. There has been undoubtedly a certain amount of solution of quinine sulphate in every one of the Bibbins samples as well as in Quin-Coco and Coco-Quinine, just to what extent this solution has taken place I am not prepared to say. But to whatever extent quinine sulphate is soluble in the respective media in which it is found in the Bibbins samples and in Coco-Quinine and Quin-Coco, certainly to that extent it has dissolved.

Q12. Would the absence of quinine crystals be considered proof that the quinine had dissolved?

A. Not necessarily. There are at least two conditions under which quinine sulphate might lose its crystal character and still not be in solution. If for example quinine sulphate was allowed to remain exposed to the air it loses its water of crystallization and gradually becomes amorphous and I can very readily see how an amorphous state might be produced in the once crystalline quinine sulphate after it has been mixed with other ingredients in these various samples. What I mean is that while it might not be possible to see crystals of quinine sulphate under the microscope it might be possible to see the quinine there in some other form in which it was amorphous and in which form it could not be recognized as quinine merely by a microscopic examination.

Q13. I understand from your last answer that in your judgment a percentage of the quinine sulphate is

undoubtedly in solution in Quin-Coco and Coco-Quinine?

A. That is correct.

Q14. Have you observed any evidence of decomposition of mucilage of quince seed in the Bibbins Sample No. 1?

A. I have not.

Q15. In answer to Q26 Dr. Beringer, testifying in respect to Sample No. 1, said, "In this specimen I note further separation and unevenness of preparation indicating some additional decomposition or changes." What have you to say as to this?

A. Of course I do not know whether Mr. Beringer actually saw any separation or not. That would absolutely be no indication of decomposition any more than if you mixed together linseed oil and white lead in the form of a paint and allowed this mixture to stand, the white lead will separate from the linseed oil, but there will be no decomposition. There is absolutely no connection between separation and decomposition.

Q16. In answer to XQ153 Dr. Beringer stated that separation could not be brought about by standing, that is not in a perfect preparation, that that would be evidence of the imperfect suspension. What is your opinion of this evidence?

A. That matter is axiomatic. If a thing is homogeneous the suspended matter is uniformly distributed. If it separated it is not homogeneous. As to a perfect suspension remaining as such forever I believe none exists or ever will exist. Coco-Quinine and Quin-Coco which are apparently the standards in this case begin to cease to be homogeneous the moment they are allowed to stand after having been agitated. In other words, they are homogeneous only while the quinine is uniformly distributed. As soon as it begins to distribute itself non-uniformly the preparation ceases to be homogeneous.

Q17. I ask you to notice Bibbins Specimen No. 2

and I call your attention to the testimony of Dr. Beringer respecting this specimen, beginning in Q27 and ending in Q30. To save repeating I hand you the testimony and ask you to comment on Dr. Beringer's testimony as it appears in his answers to these questions, giving your reasons for your answer or opinion?

A. I differ with Dr. Beringer in some of his statements and agree with him in only one. The one with which I agree is that this preparation has an acid reaction. I have never seen any evidence of separation in Sample No. 2. On the contrary I consider it a very homogeneous mixture, far more homogeneous than Quin-Coco or Coco-Quinine as is evidenced not only by the appearance on standing but also by a quantitative determination of the amount of quinine sulphate at the top and bottom of the sample after it has stood for some time. What Dr. Beringer calls resinous masses on the sides of the bottle may or may not be resinous masses, I do not know. And he has produced no evidence to show that he knows. He says that under the microscope the mucilage is separated in small gelatinous masses and the gelatin in larger globules. He has offered no evidence to show how he knew that what he was looking at was mucilage or gelatin or something else.

I have tasted this sample a number of times and found it not at all bitter. In that respect it is identical with Coco-Quinine and Quin-Coco. In my judgment it is a pharmaceutically satisfactory, palatable, and a marketable product.

Q18. Will you please read Dr. Beringer's answer to Q32 respecting Specimen No. 3 and express your opinion as to the correctness of his views there stated?

A. He says that there was a heavy deposit on the vial. I see no heavy deposit. There are a few particles adhering to the side of the bottle, and practically no sediment on the bottom. In my judgment it is quite a homogeneous liquid. In fact I know it is

homogeneous because I have assayed it at the top and bottom after standing. I agree that it has an acid reaction.

Q19. Please read his answer to Q34 and state whether he is correct in his opinion about the fermentation of acacia and if you discovered any fermentation in this sample.

A. Acacia is a vegetable product and like all vegetable products is subject to fermentation. It would depend upon what kind of fermentation it underwent as to whether or not an acid would be formed, but in this sample No. 3 there is absolutely no evidence of any fermentation.

Q20. Dr. Beringer testified in answer to Q's 35 and 36 that the effect of this acid produced by the fermentation of acacia would be to dissolve the quinine and increase the amount of quinine in solution and consequently increase the bitterness of the preparation. In your opinion is this true?

A. In the first place there is no evidence that fermentation took place and hence there is no evidence that acid was formed and even if acid had been formed it by no means follows that the quinine would have gone into solution. It is much more likely that the acid formed would have precipitated some of the quinine that was already in solution. As a matter of fact, however, it is idle to speculate as to what the acid would do without knowing exactly what acid was in question.

Q21. Will you please observe Bibbins Sample Bottle No. 4 and read Dr. Beringer's testimony respecting this sample contained in his answers to Qs. 41, 42 and 43 and state your opinion of the correctness of Dr. Beringer's conclusions as there expressed?

A. In this instance again I partly agree and mostly disagree with Mr. Beringer. I do not agree that the sample has the flavor of dextrine but has a distinct flavor of coffee, that it is not at all bitter, not in the

least bitter and is very palatable just as much so as Coco-Quinine and Quin-Coco.

In his answer to Q41 Mr. Beringer contradicts himself. He says that coffee contains caffee-tannic acid, which it does, and this acid will precipitate quinine. According to Mr. Beringer if the quinine is precipitated out of solution it takes away from the bitterness of the preparation. So that the precipitation of the quinine by the tannic acid of the coffee according to Mr. Beringer would render the preparation less bitter and it ought to be a good thing for the preparation, especially since quinine tannate is less soluble than quinine sulphate.

Mr. Beringer also states that he noticed additional precipitation evidenced on the sides of the bottle. I do not now nor have I ever noticed any precipitation in this sample. It is about as homogeneous a liquid as it is possible to conceive of. This fact is shown not only by its appearance but by assay after standing.

In my judgment this sample is pharmaceutically stable and palatable and would make an elegant, easily marketable preparation.

Q22. I ask you now to observe Bibbins Sample Bottle No. 5 and to take up Dr. Beringers testimony respecting this preparation as found in his answers to Q's 44 to 58 and express your opinion as to the said testimony of Dr. Beringer and give your own opinion on the various subjects inquired about?

A. I agree with Mr. Beringer that this sample is less viscous than the other samples. In fact it is the least viscous of all the samples. But in spite of its low viscosity I found that the quinine sulphate was uniformly distributed through it even after it had stood six weeks without being disturbed. I never saw any evidence whatever of precipitation either on the sides or the bottom of the bottle, certainly nowhere near as much as appears in Quin-Coco and Coco-

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Quinine and I do not see how Mr. Beringer could possibly tell by looking at the alleged separated mass that he saw that a part of it was crystals of quinine sulphate.

With reference to the sketch referred to I have seen this sketch and examined it and Mr. Beringer has offered no evidence to show that what he saw in the miscroscope was quince-seed mucilage. He apparently saw some round globular masses and having been told that quince-seed mucilage was in this preparation he jumped to the conclusion that what he was looking at was quince-seed mucilage. Mucilage of quince seed has absolutely no structural characteristic by which it can be identified under a microscope.

Mr. Beringer does not like the color of this preparation but that is a matter of personal taste. What he means by coppery green I do not know. I never saw any green copper.

As I have never seen any precipitation in this sample I have never seen an additional precipitation.

To me personally it is one of the most pleasant of the Bibbins samples, as I like the taste of peppermint and the sample is entirely free from bitter taste. I believe it could be readily marketed as a satisfactory, palatable, stable preparation.

As I said before this is the least viscous of all the Bibbins samples and Mr. Beringer says that the effect of its being less viscous would be that it would not hold the quinine in suspension satisfactorily. I have made a determination of the viscosity of this particular sample as well as of the other nine Bibbins samples and samples of Coco-Quinine and Quin-Coco and while this particular sample No. 5 has the least viscosity nevertheless after standing at rest for six weeks it showed a perfectly uniform distribution of the quinine sulphate at the top and bottom of the bottle as determined by chemical assay, so that I am

convinced that the sample is entirely homogeneous, much more so than Coco-Quinine and Quin-Coco.

It is true that unless the medicinal ingredient is equally and thoroughly distributed as a dose is poured out of the bottle or a portion is dispensed on a prescription you would not get uniform distribution of the medical agent. This uniform distribution of the medicinal ingredient is present in this sample No. 5 and the labels of Quin-Coco and Coco-Quinine specifically direct that they be shaken before being dispensed. This is for the purpose of course of bringing about thorough distribution of the quinine.

Q23. In answer to XQ177 Dr. Beringer testified in respect to Specimen No. 5 that it was less viscous than Coco-Quinine and Quin-Coco and would not hold the quinine in suspension satisfactorily. He had explained that he determined the viscosity by comparing the physical appearance by comparison. Will you please state how you determined the comparative viscosity of these various preparations and read into the record the result of your tests on this subject?

A. The method which I used in determining the viscosities of these various samples depended upon the use of the McMichael viscosimeter. I remember the viscosities of some of these samples, but not all, but if permitted to refresh my memory by referring to notes I can give them all to you. I may say that this memoranda of the viscosities was made at the time that the determinations were made.

Bibbins Sample No. 1 had a viscosity of 2.60; Bibbins Sample No. 2, .60; Bibbins Sample No. 3, 2.65; Bibbins Sample No. 4, .85. Bibbins Sample No. 5, .50; Bibbins Sample No. 6, 1.54; Bibbins Sample No. 7, 9.00; Bibbins Sample No. 8, 4.03; Bibbins Sample No. 9, 7.30; Bibbins Sample No. 10, 2.10. I at the same time determined the viscosities of several samples of Coco-Quinine and Quin-Coco, which I will refer to by the lot number as appeared on the label. Beginning

with Coco-Quinne No. 592,800, viscosity 1.19; No. 569,-021, viscosity 1.23; No. 559,052, viscosity 1.25; No. 584,825, viscosity 1.34; No. 579,864, viscosity 1.26; No. 583,811, viscosity 1.56; No. 592,800, viscosity 1.36. Now in the same way I determined the viscosity of the Quin-Coco represented by their lot numbers as appeared on the labels as follows: No. 186,960, viscosity 1.09; No. 171,705, viscosity 1.80; No. 186,004, viscosity 1.98; No. 47,590, viscosity .85; No. 47,471, viscosity 1.12.

Now to give an idea as to what these viscosities mean in comparison with some familiar substance U. S. P. Simple syrup has a viscosity of 1.30, almost identical with the average viscosities of Coco-Quinine and Quin-Coco, while a 49.16 per cent. solution be of weight of sugar gives a viscosity of .11.

I might add that these viscosities were all determined at a temperature of 25 degrees Centigrade the temperature for which the McMichael instrument is standardized.

Q24. Did you also determine the comparative evenness of distribution of the quinine crystals in the several samples and if so how did you make the determination and what were the results?

A. I did make a determination of the uniformity of distribution of the quinine sulphate in the ten Bibbins samples as well as in samples of Coco-Quinine and Quin-Coco, after I had allowed them all to stand for a period of time. The method which I used in this determination consisted in the assay of portions from the top and bottom of the various bottles for quinine. The ten Bibbins samples were allowed to stand undisturbed for six weeks, one sample each of Coco-Quinine and Quin-Coco designated as No. 2 in each case stood for one week. And one sample each of Coco-Quinine and Quin-Coco designated as No. 1 had stood for three months undisturbed. Fifteen C. C. portions were used for analysis. These were removed by careful pipetting with a pipette having a

large orifice from the tops and bottoms of the bottles in each case. The results as I have them expressed are in grains of crystallized quinine sulphate per fluid ounce. They are as follows:

	Top	Bottom
Coco-Quinine No. 1	11.50 gr.	4.30
Quin-Coco No. 1	21.96	0.58
Bibbins Sample No. 6	11.78	11.68
" " 5	11.06	10.98
" " 4	10.94	11.00
" " 7	13.12	12.92
" " 3	9.76	10.66
" " 8	12.96	12.00
" " 2	10.64	10.72
" " 9	11.02	10.88
" " 1	11.54	11.60
" " 10	9.98	10.06
Coco-Quinine No. 2	16.24	3.36
Quin-Coco No. 2	18.56	2.98

Q25. From your tests and experiments what is your opinion respecting the relationship, if any exists, between the viscosity or the degree of viscosity of the suspending agent and the uniformity of distribution of the quinine crystals in the respective preparations?

A. If there is any relationship between viscosity and the distribution of quinine crystals in these various samples it is so obscure that it is impossible to detect it. An analysis of my determination of viscosity taken together with the assay on the various samples will bring this out clearly. For example, the ten Bibbins samples varied in viscosity from .50 to 9.00, and yet each and every one of these ten samples showed a uniform distribution of quinine sulphate after six weeks standing in an absolutely undisturbed condition. While on the other hand Coco-Quinine which showed a comparatively uniform viscosity for different lots shows a very great lack of uniformity in distribution of quinine sul-

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phate even after one week's standing. And the same is true of Quin-Coco.

Q26. In answer to Q57 Dr. Beringer when asked what he meant in speaking of the quinine crystals as being eroded in some of the specimens answered: "The word attacked there I used in the same sense as I might have used the words acted upon by the acidity of the fluid, acted upon, eaten away." What have you to say as to this?

A. I would say that the term "eroded" or "attacked" or "eaten away" is an improper term to use in that connection unless evidence was at hand to show positively that the quinine sulphate had been dissolved by the menstruum. The appearance of the crystals is more likely to have been due to a physical change taking place in them rather than to the solvent action of the menstruum.

Q27. Testifying in respect to Bibbins Specimen No. 6, Dr. Beringer stated that this sample was of uneven thickness, showed separation of gelatinous like masses, decidedly acid, quite bitter to the taste; that under the microscope the crystals of quinine showed that they were acted upon or eroded; were separated, the Irish moss, jelly and quince seed mucilage in different masses; that this was apparent even on the surface of the glass bottle as well as under the microscope; that he illustrated in the Beringer sketch a typical illustration of some Irish moss jelly as found in this specimen; likewise the mucilage of quince-seed; that these separations were unequally distributed throughout the field and showed the lack of homogeneous suspension. Will you please refer to the Bibbins Sample Bottle No. 6, and express your opinion of the testimony thus given by Dr. Beringer respecting its contents.

A. With respect to the homogeneity of this sample No. 6 my assay shows conclusively that quinine sulphate is uniformly distributed throughout even though it stood six weeks. In common with all the

other Bibbins samples as well as the Coco-Quinine and Quin-Coco, it is acid. Its taste is not in the least bitter. There is a deposit of some particles upon the sides of the bottle but these are no more in quantity than are present on the sides of the bottle of Coco-Quinine or Quin-Coco. And as for stating what these particles consist of that is entirely impossible without a chemical examination and it does not appear that Mr. Beringer made such an examination.

With reference to the sketch which he has made of the miscroscopic appearance of Irish moss and mucilage of quince-seed, I would say that it is entirely impossible for any one to identify under the microscope mucilage of quince-seed or mucilage of Irish moss because in preparing these mucilages none of the organic or cellular structure of either quince-seed or Irish moss enters into the preparation. And hence there is no identifying characteristic present. In the preparation of these mucilages the quince-seed or the Irish moss is soaked in water for the purpose of extracting or dissolving the mucilaginous matter from the seed or moss, then this strained and the product which passes through is what is used as the suspending medium. The part which has the characteristic cellular structure remaining on the strainer.

Q28. Answering Q61 Dr. Beringer further stated respecting this Bibbins Sample No. 6 that in his opinion it has so many defects that it would not be pharmaceutically satisfactory, would not be stable, would not be palatable and could not be successfully marketed. He stated further "not the least objectionable feature is the use of benzaldehyde as a flavoring". Will you please give your opinion on these several points inquired about?

A. I can not agree with Mr. Beringer on any statement he has made in that answer. In my judgment Sample No. 6 is a perfectly homogeneous stable, palatable, and marketable preparation. As to the flavor

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of benzaldehyde it is a very popular flavor. It appears as a flavor in many products of the bakeries, notably in maccaroons. The flavor of benzaldehyde being identical with that of bitter almonds. It is also the flavor of the marachino cherry in the seductive Manhatton Cocktail. It is also present naturally in the stones of other fruits such as apricot, peach, and in certain barks, such as that of the wild cherry tree and is the characteristic flavor of that pharmaceutical known as the syrup of wild cherry. It is quite a lasting flavor and under the conditions under which it is used, especially in this Sample No. 6 it would be difficult to conceive how it could be oxidized to benzoic acid because oxygen or an oxidizing agent is required for such a change. The tendency would be rather to keep it in a reduced state in this preparation.

Q29. In answer to Q85 Dr. Beringer stated in respect to Benzaldehyde as a flavor it "is subject to the very serious objection that it is apt to be oxidized, being reduced to benzoic acid and losing its flavor entirely so this is accepted as a satisfactory flavoring for very few preparations indeed". I take it from your last answer that you do not wholly agree with this conclusion. Have you any further opinion to express in view of this quotation from Dr. Beringer's testimony?

A. I do not agree that it is apt to undergo oxidization. Under favorable conditions it may undergo oxidization, that is to say, if a bottle of benzaldehyde which is only partially filled and which is opened frequently thus renewing the air above the surface of the benzaldehyde, there may in two or three years time be formed a fraction of one per cent. of benzoic acid, but under the conditions under which benzaldehyde is used in Bibbins Sample No. 6 no such oxidation would take place. Benzaldehyde as a matter of fact is used quite commonly as a flavoring agent, every housewife using it as a flavoring for cakes, for icings which are even sub-

jected to heat in an oven full of air and still the benzaldehyde retains its flavor.

Q30. Will you please take Dr. Beringer's testimony respecting Bibbins Sample No. 7 beginning in his answer to Q62 and continuing to Q66, consider the same, and express your opinion as to his statements?

A. I have never been able to detect any separation at all in this Sample No. 7. Mr. Beringer refers to a brown deposit upon the sides of the bottle. Of course if you pour a brown liquid upon the sides of a bottle, that portion of the liquid which adheres to the sides of the bottle will of course be brown, but it is of very uniform consistency, shows perfect homogeneity and adheres to the sides of the bottle much less than either Coco-Quinine or Quin-Coco. I have failed to find a deposit or separation of any solid matter at all. Like all the other samples enumerated before it is acid. Upon being tasted it does disclose a slightly bitter taste. As to the appearance of what Mr. Beringer saw under the microscope not a word of evidence is offered to prove that he saw swollen cells of tragacanth or flavoring oil and the fact that he found only six small crystals of quinine is of absolutely no significance. He states that the acidity of this preparation is largely due to the acacia present. The amount of acacia present is necessarily very small and the amount of acidity of the acacia is still smaller. The preparation shows absolutely no sign of having undergone fermentation so the acidity can not have increased. Furthermore as I have shown before the acidity has nothing to do with the bitterness, because Quin-Coco and Coco-Quinine are both acid and free from bitter taste as well as the Bibbins Samples 2, 4, 5 and 6.

In my judgment this preparation would be acceptable pharmaceutically even though it is not as good as Samples Nos. 2, 4, 5 and 6 and even though it is slightly bitter. The thickness with which it pours is not a de-

fect but tends to insure uniformity of distribution of quinine and the dispensing of a uniform dose.

Q31. I will ask you to take Bibbins Specimen No. 8 and refer to Dr. Beringer's testimony respecting the same found in his answers to Qs. 67 to 70, inclusive, and make like answer thereto, as in the last case?

A. With regard to Sample No. 8 in which starch has been used as one of the suspending mediums together with mucilage of tragacanth Mr. Beringer undertakes to say what starch will do under certain conditions. He has not confined himself at all to what starch has done in the sample in question. This sample is perfectly homogeneous as shown to the eye and as shown by assay, the quinine being uniformly distributed throughout it. I see no deposit on the bottle other than that which has adhered from the liquid flowing down the sides of the bottle which is much less aged than in the case of either Coco-Quinine or Quin-Coco.

As to Mr. Beringer's objection to the use of oil of orange as a flavoring agent his objection would be easily removed by using a terpenless oil of orange which would never develop a terebinthimate odor.

He saw again under the microscope things for identifying which he has given no evidence. The fact that what he considered to be crystals of quinine sulphate with knob-like or bone-like shaped points is of no significance. I agree with Mr. Beringer that this sample like all the other is acid. The sample is also somewhat bitter but not sufficiently bitter to preclude possibility of its being marketed as a satisfactory pharmaceutical preparation.

Q32. What is your opinion of starch as a suspending medium and is or is there not starch in the cocoa or chocolate and what function does it perform there?

A. Starch is one of the best suspending mediums that we have at our command. And whatever suspension there may be in Coco-Quinine or Quin-Coco is entirely due to the starch which is present in cocoa, this

varying in different samples of cocoa from eight to fourteen per cent. The excellence of starch as a suspending medium is evidenced in Coco-Quinine and Quin-Coco in that it not only suspends the quinine sulphate but also all the other solid matter of the cocoa including the fat, the tannin, the cellulose, the protein, etc.

Q33. In his answer to Q70 Dr. Beringer stated that starch is not a good suspending material, that when used in mucilaginous form is very prone to decomposition and hydrolysis and fermentation setting in quickly. In answer to XQ195 in which he was asked how he distinguished between decomposition, hydrolysis and fermentation he answered "fermentation would be one of the methods of decomposition. The production of a fungus growth would be another decomposition that might take place in starch. In other words hydrolysis as used there refers to the change which starch undergoes very rapidly in pasty form to certain changes that are formed by dextrose". He was then asked in XQ196 "Which takes place first?" He responded "That would depend upon the conditions which existed. I could not tell. It would depend on the temperature and other conditions which would take place first."

I ask you to consider this testimony by Dr. Beringer and state your opinion and conclusions respecting the matters about which he testified?

A. I think that Mr. Beringer has the subject of fermentation, decomposition and hydrolysis of starch pretty well confused. In the first place there is absolutely no evidence either from his testimony or from my observation that starch has undergone any decomposition in the Bibbins sample in which it was used. Of course starch will undergo fermentation or even putrefaction because it is a vegetable product and all vegetable products are subject to these destructive changes.

However the presence of a suitable preservative will always prevent such fermentative changes taking place. Fermentation can not take place without the presence of an organism to start it and carry it on and fermentation means the decomposition of a substance into two or more simpler ones of more or less usefulness. This decomposition being brought about by an organism. Putrefaction is a similar decomposition in which the products formed are usually useless. Also brought about by an organism. Decomposition means the breaking up of a molecule into two or more simpler ones with or without the aid of organism. Hydrolysis consists in the formation by the addition of water to a substance of a more complex or of two or more simpler substances. Starch as we know is the starting point in the manufacture of alcohol. The starch is changed first by hydrolysis into dextrose and the dextrose is changed by fermentation into alcohol and carbon dioxide. This will illustrate the terms which I have explained. In order for the hydrolysis of starch to take place the starch must be treated and usually heated in the presence of a large amount of water with either a dilute acid or a dilute alkali. Such a condition does not obtain in mucilage of starch or in starch paste. And it is only after the starch has undergone hydrolysis that it can undergo fermentation, and when the fermentation sets in the starch is no longer starch but has been changed by hydrolysis into dextrose.

Q34. What is the nature of the carbon dioxide?

A. Carbon dioxide is what is commonly known as carbonic acid gas and is a gaseous form of matter. One of the means of detecting whether or not fermentation has taken place would be the determination of whether or not carbon dioxide gas was evolved.

Q35. Do you consider it possible for fermentation to take place in the case of either one of the Bibbins samples if contained in a glass bottle and sealed tightly

and maintained in this condition for a period of several months?

A. I know that fermentation has not taken place in these samples by the absence of carbon dioxide in any one of them. Furthermore if fermentation had taken place a pressure of gas would have been noticed when the stopper was withdrawn or even sufficient pressure might have been developed to blow the cork out or burst the bottle, and that has not been the case.

Q36. In answer to Q23, respecting Bibbins Sample No. 1 Dr. Beringer said "The acidity here I think is due to the rapidity with which mucilage of quince-seed deteriorates. That breaks down very readily. I think the acidity in this particular formula was largely due to the decomposition which takes place so readily in mucilage of quince-seed." What have you to say as to this?

A. Mucilage of quince-seed like any other vegetable product will undergo fermentation and consequent decomposition if not protected by some preservative agent. There is no evidence at all that there has been any decomposition or any fermentation in this Sample No. 1 of mucilage of quince-seed or of anything else. Mr. Beringer has been dealing with hypothetical possibilities and not with the facts as represented in this sample. Of course mucilage of quince seed will decompose but it has not in this instance.

Q37. Please take Bibbins Sample No. 9 and consider the same in connection with Dr. Beringer's testimony respecting the same as found in his answers to Qs. 71 and 73 respectively and express your views and conclusions on the points there testified to by Dr. Beringer?

A. This sample No. 9 shows perfect homogeneity as evidenced by appearance to the eye, as well as by chemical analysis after standing. Of course being a thick liquid some of it remains on the side of the bottle which has been wet with it, and Mr. Beringer drew a

very apt comparison when he said it looked like an emulsion of cod liver oil, which is one of the most homogeneous emulsions that we know of. This preparation contains as flavoring agents, oils of cassia, peppermint and wintergreen and if no other preservative had been added to it these three essential oils would tend to preserve it, as they exert a very distinct preservative action. Pharmacists who make their own starch paste commonly add oil of cassia to it to keep it from spoiling. As to its color not being inviting that is altogether a matter of taste. It looks to me exactly like a bottle of Durke's salad dressing which many people find pleasant. In common with all the other samples it has an acid reaction. It has a faint bitter taste.

Mr. Beringer claims to have seen under the microscope yellow grains of gelatin jelly and swollen grains of tragacanth but no evidence is adduced to show that he identified them as such. In my judgment this specimen would be entirely acceptable as a marketable pharmaceutical preparation.

Mr. Beringer further states that the use of gelatin is objectionable because if used in insufficient amount it makes a watery paste insufficiently strong to suspend. In the sample in question, which is very viscous, there is no thin watery paste and there is perfect suspension. Continuing Mr. Beringer says if made strong enough it would separate out in jelly like masses, not being homogeneous. On examining the sample I find that no jelly like masses have separated out and the preparation is entirely homogeneous, showing that Mr. Bibbins used good judgment in selecting just the proper amount of gelatin to accomplish the desired result.

Q38. In this Sample No. 9 the coloring was stated by Mr. Bibbins to be napthol yellow S (Bibbins Deposition Page 1058, Plaintiff's Record, XQ 29). In answer to Q86 Dr. Beringer stated "coal tar dyes as a rule are not directed for medicinal preparations." In answer to Q. 87 in which he was asked "can you quote

any living authority as unfavorable to the use of coal tar dyes in this connection" he answered "There is some uncertainty as to the thereapeutic action of some of these dyes and Allen in his commercial analysis, Alfred H. Allen, one of the celebrated English authorities cautions against the use of at least none of these dyes, namely, napthaline yellow or napthol yellow, which is sometimes used for coloring food articles yellow, because of its marked poisonous character, which makes it very unfit. He states 'That comparatively small doses of napthaline yellow are said to cause asthmatic breathing a considerable rise in temperature, convulsions and ultimate death.' These are among the reasons which I think have rather deterred pharmacists from using coal tar dyes to any extent in medicinal preparations." What have you to say respecting this testimony?

A. In the first place certain coal tar dyes are used by pharmacists for example methylene blue. In the second place Mr. Beringer was asked to quote a living authority and he quoted a dead one. Alfred Allen died several years ago. I have looked up a quotation with reference to napthol yellow in Allen and he quotes a previous investigator, in fact, two of them, one French and one German, to the effect that napthol yellow will produce asthmatic breathing, rise in temperature and ultimate death, and furthermore, that, given to a dog in half gram doses on two successive days followed by a one gram dose of the sodium salt on the third day killed the dog on the fourth day. The weight of the dog was nearly seven thousand grams. This all applies to napthol yellow. Allen further states that napthol yellow S given in four times these amounts produced no bad effect on another dog.

Q39. If you have the book here will you kindly identify the same and refer to the pages on which the quotation you have referred to can be found, and also

name the authorities from which Allen in his work was quoting.

A. This book is Allen's Commercial Organic Analysis, Fourth Edition, Volume 5, page 126, footnote. The authors quoted by Allen are Cazeneuve and Lepine (Comp. Rend., 1885, 1167,) and Weyl (Ber., 1888, 21, 2191).

Q40. Is napthalene yellow or napthol yellow sometimes used for coloring food articles yellow.

A. Napthol yellow has been used for coloring food but its use is forbidden by the Department of Agriculture at Washington, D. C. The use of napthol yellow S however in foods is permitted by the same authority, it being one of the seven so called Certified Colors.

Q41. A part of Dr. Beringer's answer to Q. 86 is as follows— "It has been the custom rather to avoid the use of coal tar or synthetic colors that might be called coal tar derivatives, for use in medicinal products. Some of these colorings are susceptible to change and precipitation, and I suspect that in some of those specimens which show precipitation—this is due in a measure to the artificial coloring that has been used in the specimen." What have you to say as to this?

A. There are only four of these specimens which have been colored artificially and there is absolutely no evidence of any precipitation of any sort in them, and certainly not of the coloring matter. Furthermore the coal tar colors are much less apt to precipitate than natural vegetable or animal coloring matters. And are very much more apt to be purer and more wholesome than natural vegetable and animal colors. The coal tar colors are produced in chemical factories always in the same way under the same conditions and are made uniform. The vegetable and animal dyes such as cudbear and cochineal are gathered under very unsanitary conditions in foreign countries

by people of the lowest classes and hence are apt to be contaminated with almost any kind of impurities.

Q42. I now ask you to examine the testimony of Dr. Beringer respecting Bibbins Sample No. 10, beginning in his answer to Q. 74 and state your opinion and conclusions respecting the same.

A. This Sample No. 10 Mr. Beringer thinks has been colored artificially and that he thought he detected some of the coloring matter in what had separated out. This sample has not been colored artificially, hence there could be no coloring matter contained in the portion that he claimed separated out. I have been unable to detect the separation of any solid material and certainly do not see the dusty deposit on the sides of the bottle to which he refers. He does not make it clear whether he refers to the inside or the outside.

This sample has been shown by me to be entirely homogeneous as shown by quantitative assay. Like all the other samples it has an acid reaction to litmus paper. It has a somewhat bitter taste. The absence of the crystals of quinine sulphate under the miscroscope is not significant, as I explained before, they doubtless had lost their crystallinity.

This preparation in my judgment could be successfully marketed as a pharmaceutical preparation.

Q43. Have you samples of Coco-Quinine and Quin-Coco in bottles similar to those in which the Bibbins samples are contained, and if so will you please produce them?

A. I have and here hand you two bottles similar to those in which the Bibbins samples are contained, containing Coco-Quinine and two like bottles containing Quin-Coco.

Mr. Bradford: The said bottles are offered in evidence and marked Plaintiff's Exhibits, respectively, Coco-Quinine, Caspari Sample No. 1, Coco-Quinine Caspari Sample No. 2, and Quin-

Coco Caspari Sample No. 1, and Quin-Coco, Caspari Sample No. 2.

Q44. Please state when these bottles were filled with what they contain, where and by whom, and from what source the product was obtained?

A. These bottles were filled by me on December 2nd, 1917, in the laboratory of Eli Lilly & Co., from bottles of Coco-Quinine and Quin-Coco which I purchased in the open market in St. Louis in their original packages.

Q45. In answer to Q82 Dr. Beringer stated "The homogeneous suspension of the quinine is essential to the preparation of a pharmaceutically perfect tasteless quinine syrup." What have you to say as to this?

A. If homogeneity is necessary to a perfect, tasteless quinine syrup then there is none on the market because both Coco-Quinine and Quin-Coco upon standing even for a comparatively short time become very non-homogeneous as is apparent both to the eye and as the result of chemical analysis. However, the tastelessness of the preparation is not dependent upon the suspension of the quinine. The only reason for suspending the quinine and placing a shake label on the bottle is to insure uniformity of doses in dispensing.

Q46. Dr. Beringer stated in answer to Q84 that both Coco-Quinine and Quin-Coco proved to be free from the deficiencies that he found apparent in the ten Bibbins specimens. What have you to say as to this?

A. I differ with Dr. Beringer entirely on this question. Each and every one of the ten Bibbins samples is far more homogeneous than either Coco-Quinine or Quin-Coco as shown by chemical assay upon standing. Mr. Beringer considers acidity a defect and yet both Coco-Quinine and Quin-Coco are acid. The quinine sulphate is much more uniformly and more permanently distributed in the Bibbins samples than in either Coco-Quinine or Quin-Coco, and at least four of the Bibbins samples, Nos. 2, 4, 5 and 6, are just as free from bitterness as are Coco-Quinine and Quin-Coco.

Q47. In answer to Q85 Dr. Beringer stated "As a general statement my opinion is that to disguise any drug or any type of drug an individual or distinctive flavoring must be selected." What have you to say as to this?

A. That depends largely upon what a distinctive or individual flavoring is. Individual flavorings are almost non-existent. If we speak of a flavor of peppermint we know that the oil of peppermint contains at least sixteen to twenty different individual substances which are blended together and form a flavor that we commonly call peppermint. The flavor of vanilla is due to a blending of the flavors of several different substances contained in the vanilla bean. The flavor of chocolate is due to a number of different substances blended together giving us what we call a chocolate flavor.

Practically all of what we commonly consider to be individual flavors are in reality blends. Therefore it is not necessary to use an individual flavor to disguise the taste of a drug.

Q48. I show you Complainant's Exhibit, Bottle No. 1, shown by the evidence to contain Coco-Quinine with cocoa omitted and ask you if you have examined this and tasted it and whether or not in your judgment it is an acceptable pharmaceutical preparation and whether or not it is bitter?

A. I have examined this sample. I have tasted it and found that it is entirely free from bitter taste, which shows that the chocolate or cocoa has nothing to do with masking the bitterness of the quinine.

Q49. I now show you Complainant's Exhibit, Bottle No. 2 shown by the evidence to contain Coco-Quinine with the yerba santa omitted and ask you if you have examined this and tasted it and what you find as respecting its bitterness and pharmaceutical merit?

A. I have examined this in the same way that I examined the previous sample, tasted it and found it

extremely bitter, showing again that the cocoa does not mask the bitterness.

Q50. Dr. Beringer in his answer to Q87 stated that tragacanth gum continued to swell and swell and will not yield a uniform preparation and on cross-examination when asked how long this gum would continue to swell stated that it would swell indefinitely. What is your opinion as to this?

A. Tragacanth gum will swell when water is added to it until it is saturated with water, and no longer.

Q51. In the same answer he said respecting Irish moss mucilage that it is subject to a very serious objection in that it would separate out into uneven jelly like mass and that the preparation would consequently be far from homogeneous. What have you to say as to this?

A. That statement is not borne out by the facts. Mucilage of Irish moss does not separate out and is one of the most common emulsifying and suspending mediums used.

Q52. Can dry quinine crystals be swallowed without a bitter taste?

A. No.

Q53. In answer to XQ107 Dr. Beringer stated that the precipitation found in the several Bibbins samples does not appear to be in one uniform substance, that in some cases it is the resinous matter of the flavoring; in others a separation of the coloring; in others a separation of the suspending material; in others a separation of the quinine, as where coffee is used. What have you to say as to this and is there any proofs in the previous testimony of Dr. Beringer that justifies this answer?

A. As I have said before I have failed to find any separation of any sediment in any of these samples. Mr. Beringer examined them under the microscope and was really looking at a material which was in suspension, and not looking at a sedimentation. Even if he

had been looking at a sedimentation there is absolutely no evidence in his testimony to justify any statement from him as to what that sediment consisted of.

Q54. In answer to XQ122, which asked if there were other suspending mediums which might be used besides chocolate and Dr. Beringer said: "We have examined all those that have been suggested and there is nothing before me to change the opinion I gave in my direct testimony that chocolate was the only suspending medium that seems to answer the purpose. There is a colloidal nature about chocolate and its constituent that seems to serve this purpose in a way that nothing else so far as suggested does." What have you to say as to this?

A. Every one of the ten Bibbins samples shows that there is a better suspending medium than chocolate. For example chocolate suspends by virtue of the starch which it contains and starch was used in one of the Bibbins samples as the suspending medium. I do not know in just what sense Mr. Beringer used the word "colloidal". Starch does form a colloidal solution and inasmuch as chocolate contains starch to that same extent chocolate forms a colloidal solution. There is absolutely no difference in the way in which chocolate acts as a suspending medium in Coco-Quinine and Quin-Coco and the way in which the various suspending media which Bibbins used act in his samples.

Q55. I call your attention to Dr. Beringer's definition of colloidal as found in his answers to XQs. 162, 163 and 164 and ask you to express your opinion thereon?

A. The definition which he has given for colloidal is the proper definition for the word "colloid" in distinction from a crystalloid. I do not agree with his definition for a colloidal solution. A colloidal solution I would say is a suspension of a solid in a liquid in such a way that the liquid is almost transparent and particles of solid so small that they can not be seen except

by means of the ultra microscope, and such solutions do not obey the ordinary laws of solution. I should say furthermore that a solution of acacia is a colloidal solution.

Q56. In answer to Q41, Dr. Beringer testified in respect to Bibbins Sample No. 4 as follows: "Coffee contains caffe-tannic acid which precipitates out part of the quinine and I have no doubt that part of that sediment is due to part of the quinine precipitated out in that form of tannate, so that the quinine is subject to the reaction in two different directions by this preparation." Which preparation in your judgment contained the great amount of tannic acid, the Bibbins Sample No. 4 or Coco-Quinine?

A. Bibbins Sample No. 4 and Coco-Quinine contain very nearly the same amount of tannic acid, the tannic acid in the case of the Bibbins sample coming from the coffee and the tannic acid in the Coco-Quinine coming from the cocoa.

Q57. In XQ191 Dr. Beringer was asked if quinine was equally and thoroughly distributed in Coco-Quinine. He replied that in a number of examinations he had made of Coco-Quinine there appeared to be a uniform distribution of the crystals of quinine sulphate. In XQ201 he was asked if after a bottle of Coco-Quinine had been standing a long time would there be any difference in the quinine contents at the top and at the bottom. He replied, "I have not made such a determination." Is there any other way in which he might have made the determination and justified his answer to XQ191?

A. He could have made the same assay that I made.

Q58. Had he done so he would probably have reached the same results that you did, would he not?

A. If a determination had been carried out as I carried it out he would have reached the same results.

Q59. The standing of the preparations for a period of time was a necessary part of the test made by you, is it not?

A. It was.

Q60. Is or is not cocoa a common suspending medium in liquid medicinal preparations?

A. I do not know of many liquid preparations that use cocoa as a suspending medium.

Q70. Considering the ten Bibbins samples as pharmaceutical experiments, what have you to say respecting their success in the production of satisfactory preparations when compared with ordinary pharmaceutical work?

A. I should say that the unqualified success of four experiments in ten, which is forty per cent., and a somewhat less success in the other six was a very high percentage of successful experiments as compared with the number of experiments necessary to be made before satisfactory pharmaceutical and chemical preparations have been turned out. For example salvorsen, commonly known as 606, is said to represent the six hundred and sixth experiment made before success was achieved. And in many of the preparations on the market far more than ten experiments have been made before a satisfactory product is turned out.

Q71. Would a mixture of chocolate and water ferment and decompose at ordinary room temperature?

A. It would.

Q72. What have you to say about the ethics of the practice of one manufacturer reproducing a successful pharmaceutical specialty of another manufacturer not only in therapeutic value but in physical appearance and flavor so that the imitation can be readily substituted for the original without detection?

A. I should say that such a practice is extremely unethical.

Mr. Rawle: The question and answer are objected to as immaterial and inadmissible, being

purely opinion evidence and on a subject in which the witness is not shown to be an expert and on which expert evidence is not admissible.

Q73. Dr. Beringer in his testimony has stated that as chairman of a sub-committee on the revision of the National Formulary he has made extensive experiments for the purpose of devising a satisfactory formula for a chocolate quinine preparation to be added to that book, having Coco-Quinine before him to work from. What have you to say as to the propriety of this attempted practice from an ethical standpoint?

MR. RAWLE: Objected to as irrelevant and inadmissible unless the witness is asked to deny the statement of Dr. Beringer and nothing more.

A. If the National Formulary should adopt a formula for making a tasteless quinine syrup flavored with chocolate which would yield a product that could be substituted for Coco-Quinine and could not be distinguished from it, I would consider it just as unethical as though a manufacturer had done it.

Q74. In answer to Q95 Dr. Beringer stated that the use of two or more articles in a pharmaceutical preparation where one would answer the purpose is unobjectionable because "it is prone to introduce two articles of different composition which may start decomposition", etc. * * * "As an example I may cite that it is well known that mixtures of oils become rancid much more quickly than pure oils themselves." In XQ216 he was asked to state what mixtures he referred to. He answered "Adulterated olive oil and almond oil become rancid very quickly." He was asked adulterated with what. He replied with lard oil and cotton seed oil or other common adulterants. What have you to say about this testimony?

A. It is certainly not well known to me and I do not believe it is true that a mixture of two oils will turn rancid more rapidly than either one alone would,

and I am quite sure that olive oil adulterated with lard oil or cotton seed oil will not turn rancid more rapidly than any one of these three oils alone would. With reference to the first part of the question as a general rule it may be said that it is unnecessary to use two things where one thing will do the work, but not because those two things have different compositions and may decompose each other. Two substances which act upon each other in a decomposing way should of course not be used where such decomposition would be undesirable. But if we consider for example a mixture of mucilage of quince-seed and gelatin as a suspending medium it is not as complex as cocoa which contains fat, cocoa tannin, caffein, theobromine, starch, protein, cellulose, and other substances.

Adjourned until tomorrow, Tuesday, December 4, 1917, at 9 o'clock a. m.

Indianapolis, Indiana,
Dec. 4, 1917—9 a. m.

Met pursuant to adjournment.

Parties present as before.

Q75. Have you determined the relative viscosity, specific gravity and power of suspension of a sugar solution or simple syrup and Coco-Quinine? If so will you please state what your determinations were?

A. Yes, I have made such determinations. The specific gravity and viscosity of the simple syrup of the U. S. Pharmacopoeia are almost identical with the specific gravity and viscosity of Coco-Quinine. Yet in Coco-Quinine the crystals of quinine sulphate are fairly

well suspended while crystals of quinine sulphate in simple syrup sink to the bottom of the vessel within a day or so.

Q76. Dr. Beringer was asked in XQs. 186 to 189 to explain how he determined that quinine crystals were not evenly distributed in any of the Bibbins samples. Will you please examine his testimony as it appears in his answers to these questions and state your opinion thereon?

A. Mr. Beringer states that he examined different fields of the Bibbins samples under the microscope and by counting the number of quinine crystals in each field determined that the quinine was unevenly distributed through the liquid. He did however not take into consideration the fact that all the quinine crystals which he saw were not of the same size. It is possible that he may have had fifty very small crystals in one field and still have had less quinine present than in one large crystal in another field, so that his method of determining whether or not the quinine was equally distributed is worthless.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ77. I understand that your working office is in St. Louis?

A. That is right.

XQ78. Tell be how the ten Bibbins samples reached you?

A. I took the ten Bibbins samples with me from Indianapolis, having received them from Mr. Bibbins. In fact he poured them out from the large bottles into three or four ounce bottles, and it was the smaller bottles that I took with me in each case.

XQ79. I understand that the samples you worked on and to which you testified yesterday were not in fact

taken out of these ten Bibbins bottles on the table (being the exhibits themselves in the case). Is that correct?

A. That is correct.

XQ80. And I understand that the samples which you took away to St. Louis were given you by Mr. Bibbins in three or four ounce bottles, one of each sample, which bottles Mr. Bibbins filled in your presence from bottles which he had at the Lilly laboratory, which bottles contained as he told you, the unused portions of the ten Bibbins specimens which had been put into eight ounce bottles and offered in the case?

A. That is correct.

Mr. Bradford: Counsel for plaintiff makes of record the fact that prior to the time when Dr. Caspari was given any samples for the purpose of assay and analysis counsel for defendant was asked whether or not he would insist upon such assay or analysis being made from the contents of the actual bottle exhibits that had been introduced during the Bibbins deposition or whether he would consent that Dr. Caspari might be given portions of the batches of the several preparations from which the identical bottles were filled in March, 1916. He replied at that time that he did not wish to commit himself definitely but that we should proceed and there would be no difficulty in agreeing when we came to take the testimony or a statement to this effect. Counsel for plaintiff states that Dr. Caspari was given for his assay and analysis portions of the identical experiments made by Mr. Bibbins in March, 1916, poured from the original bottles out of which these identical bottle exhibits were filled; these unused portions having remained in the laboratory where they were made from the time they were made until the time they were so used. Counsel for plaintiff further adds that the identical bottle exhibits now on the table

have never been outside of his own office or away from his own custody from the time they were introduced in evidence until they were brought to this room at this session, and that their examination by Dr. Beal as well as by Dr. Caspari and Dr. Winton and Dr. Hilton was in his office and in his presence.

MR. RAWLE: Mr. Rawle states (he is reluctant to encumber the record) that he has always assumed that any examination by plaintiff's experts of the Bibbins samples would be made from the exhibits themselves, unless plaintiff's counsel chose to do otherwise and draw from the original excess supply made by Bibbins. He supposed that nothing but a stipulation would lead opposing counsel to do otherwise than use the material in the exhibits, and if he did not so stipulate the matter would be left to the plaintiff's counsel to pursue the proper practice, or if he preferred not, then to pursue another practice without a stipulation and at his own risk.

MR. BRADFORD: Counsel for defendant having been asked to stipulate that the course pursued in this instance might be followed without objection and having left counsel for plaintiff with the impression that he would do so, and having declined to do so, the next best course will be followed. Counsel for defendant was advised that because of the fact that he and his client Mr. Pfeiffer had already emptied from these bottles a considerable portion which was not anticipated when they were offered in evidence, it was feared that to take another like portion from each, a sufficient quantity would not remain for the purposes of the court. No other purpose existed for desiring to use the unused portions of these samples for the purpose of Dr. Caspari's assays and analyses.

MR. RAWLE: Mr. Rawle is not objecting to

the witness' evidence based upon the samples he used, but wishes to know and have it appear what samples he did use.

XQ81. When did you carry these samples from Indianapolis to St. Louis?

A. It was on the 6th of October, 1917.

XQ82. When did you first take up the examination of the material in these ten bottles?

A. As soon as I returned to St. Louis on the 6th of October, 1917.

XQ83. What part of the examination did you take up and how continuously did you carry on your work on these samples?

A. These samples were allowed to stand in my laboratory for six weeks before their assay was undertaken. Thereafter I worked on them continuously until Thanksgiving Day, making the assays to which I have testified in my examination-in-chief and also tests of taste, acidity and general appearance.

XQ84. Why did you let the samples stand for six weeks before beginning on them?

A. Because my object was to determine whether upon standing there would result an uneven distribution of quinine sulphate at the top and bottom of the bottle.

XQ85. Did you not see those samples particularly during the six weeks?

A. I saw them all of the six weeks from day to day.

XQ86. Do you mean that you inspected them and worked on them for the six weeks?

A. I looked at them casually, I did not move them.

XQ87. But you did not give your mind to the work of preparation for this case until about the 17th of November?

A. That is not quite correct. I first entered the case about the first of August and from then until the receipt of the Bibbins samples in Indianapolis I de-

voted a considerable portion of time and thought to the questions involved in the case. During the time that the Bibbins samples were standing for six weeks in my laboratory I was engaged in assaying various samples of Coco-Quinine and Quin-Coco and before that had made a number of experiments for the purpose of ascertaining the best methods to be used in assay.

XQ88. My question was meant to elicit an approximate date when you took down those ten bottles and worked with their material?

A. I should say it was about the middle of November.

XQ89. Did you do the chemist's work yourself or had you someone else do any or part of it?

A. I did every bit of the work myself.

XQ90. Have you now in your mind's eye the physical appearance of each of those ten three or four ounce bottles of Bibbins' material as they stood on your shelf just before you took them down, I mean in respect of more or less sedimentation of the contents?

A. As far as I can remember there was not sufficient sedimentation in any of the samples to have been noticed.

XQ91. At what stage in the proceedings did you take material from the top and bottom of each bottle?

A. That was really the initial step in the assay.

XQ92. Can you state with absolute assurance that the contents of these bottles were not shaken or at least more or less disturbed after their six weeks rest and before you sampled them?

A. I can state with absolute assurance that these bottles were not shaken or in any way disturbed after the six weeks' standing. Otherwise there would have been no object in allowing them to stand six weeks.

XQ93. Is this the only case or business you had during those six weeks?

A. Oh, no.

XQ94. Are you not a pretty busy man?

A. I am.

XQ95. How soon after that did you make the viscosity test?

A. I made some of the viscosity tests on November 24th and some on November 30th, 1917.

XQ96. How long did it take you to make the analyses from the material taken from the top and bottom of each bottle?

A. The time necessary for the assay varied with the different samples, some requiring more, some requiring less time, and I conducted several of the assays simultaneously. After I had sampled some of the samples I then made the viscosity determination on those that had been sampled, the first ones being made on November 24th. I then assayed the remaining samples and on November 30th determined their viscosities. As an average I should say it would take from two to three days to make one assay, but several more could be made in the same time by conducting the assays simultaneously.

XQ97. I should like to ask what your standard for viscosity was. With what did you compare the viscosity of these samples?

A. The viscosity determinations were made with a McMichael viscosimeter. The standard for this instrument consists of a solution of succrose of a strength of 60 per cent. by volume or 49.16 per cent. by weight. Such a solution records a viscosity of eleven on the McMichael viscosimeter, corresponding to an absolute viscosity of .11. This means that a reading of 100 on the McMichael instrument corresponds to an absolute viscosity of one.

XQ98. On your viscosity determinations should there or should there not be a decimal point all the way down the line, and if so where?

A. The paper from which Mr. Rawle has been reading is a record of the readings of the McMichael viscosimeter made by me at the time that the experi-

ments were made. In reporting these results yesterday in my examination-in-chief I was careful to put in the decimal point in each case which is paramount to dividing the McMichael reading in each case by one hundred.

XQ99. Do you mean that water was the McMichael standard with which you compared the viscosity of the Bibbins samples as shown in your evidence and on the sheet which you have produced?

A. I do not.

XQ100. How does the viscosity of the McMichael standard which you say is succrose, compare with any known liquid, say water?

A. The standard succrose solution has about ten times the viscosity of water.

XQ101. Take the Bibbins sample No. 2, with .60 viscosity and tell me approximately how that compares with the viscosity of distilled water as a standard?

A. I should say that it was approximately sixty times as viscous as distilled water.

XQ102. Is not water distilled taken at a temperature of 25 degrees Centigrade the usual chemist's standard of comparison for viscosity?

A. Not necessarily at all. Any substance the viscosity of which has been accurately determined can be taken as a standard and it is only necessary that all determinations should be carried out under the same conditions of temperature, which was done in my experiments. It makes no difference whether we say a McMichael standard for the sugar solution which I have mentioned is eleven, or whether I say that the McMichael standard for water at the same temperature is one.

XQ103. Please tell me the viscosity of Bibbins' sample No. 7 as compared with distilled water at 25 degrees Centigrade, looking at your viscosity determinations?

A. The viscosity of the Bibbins sample No. 7 is nine hundred times that of water under the conditions mentioned.

XQ104. When at the end of those six weeks of rest on your shelf, you began to take down and work with the material of the Bibbins samples, do you state positively that these corresponding Bibbins samples on your shelf was as homogeneous in texture and as free from sedimentation as the corresponding exhibit Bibbins bottles before you on the table?

A. Yes.

XQ105. What did you do with those bottles that you worked with and where are they now?

A. They are here.

XQ106. What acidity tests did you make of the Bibbins bottles and Coco-Quinine and Quin-Coco?

A. I applied the same tests to these that Mr. Beringer did.

XQ107. Won't you please say what tests you applied and the court will not have to look back and find what Mr. Beringer applied?

A. I placed five cubic centimeters of the sample in a test tube, added ten cubic centimeters of water, shook up, allowed the supernatant liquid to become clear and tested that with blue litmus paper.

XQ108. I think you said yesterday that litmus merely detected the presence of some acid but does not tell the story of how much acid?

A. That is correct and I confirm that statement now.

XQ109. You testified yesterday that litmus showed acidity in all Bibbins and both Coco-Quinine and Quin-Coco. Is that correct?

A. That is correct.

XQ110. But so far as litmus told you anything, what it did not tell you is how much there was in any given bottle?

A. The litmus did not tell me how much there was in any given bottle.

XQ111. And so far as litmus told you anything or did not tell it, it is perfectly possible that there might have been great acidity in any one of the said twelve bottles but slight acidity in one or more of the others. Is that correct?

A. That is not quite correct. I believe it would be possible by means of litmus paper to detect the difference between very great acidity and very slight acidity.

XQ112. By slight acidity do you mean a slight trace of acidity?

A. It is very difficult to define a slight amount or a slight trace just as it is to define a great amount, but I can conceive that it would be possible to determine that one liquid would be very faintly acid and another very strongly acid by means of litmus paper.

XQ113. But you would not like as a chemist to push the virtues of litmus paper as a discoverer of acidity very much further than that?

A. No, it would be impossible to make even an approximate quantitative determination of acidity by means of litmus paper.

XQ114. I think you said yesterday that there was no relation between acidity and bitterness?

A. I think I qualified that by saying that there was not necessarily a relation between acidity and bitterness, that there might or might not be depending upon conditions. If I find that a given solution is free from bitter taste and add an acid to it and taste it again and find that it is still free from bitter taste I conclude that the addition of the acid has not increased the bitterness. Furthermore I can conceive that the addition of an acid to a liquid containing quinine partly in solution and partly in suspension would actually cause a removal of some of the quinine from solution and thereby actually decrease the bitterness.

XQ115. You can conceive, but do you know?

A. I know. The addition of tannic acid for ex-

ample to a solution of quinine sulphate would cause some of the quinine to be thrown out of solution.

XQ116. That is the one instance you can mention?

A. That is the one instance I can mention now, but tannic acid is a vegetable acid and I am convinced that other vegetable acids would act similarly, because many alkaloids occur in nature in combination with vegetable acids and can not be removed by means of water alone, indicating that the combination of the vegetable acid with the alkaloid is insoluble in water.

XQ117. Following out somewhat the same thought a little further, does not the presence of acidity in a solution containing crystals of quinine sulphate cause the crystals to pass into solution?

A. That will depend entirely upon what acid is added. As I said yesterday if you have crystals of quinine sulphate suspended in water and add sulphuric acid to that solution the quinine will dissolve. It is impossible for me to answer that question specifically unless I know what acid is added.

XQ118. Name other acids that would act in that way as you say sulphuric acid would?

A. Nitric acid would cause the solution of quinine, hydrochloric acid would, and in general I should say that the stronger mineral acids would increase the solubility of the quinine sulphate. Such acids, however, do not occur in plant life.

XQ119. In your opinion would some of the organic acids tend to a solution of the quinine sulphate crystals as referred to above?

A. I have already said tannic acid which is an organic acid, would not do so, and I had occasion to taste a sample of Coco-Quinine to which one per cent. of glacial acetic acid had been added and there was no development of a bitter taste. Whether or not the addition of that acid caused increased solution of the quinine sulphate I am unable to say, but even admitting that it did, the taste was not rendered bitter by it.

XQ120. Is it a fact that so far as crystals of quinine sulphate in a liquid pass into solution, the preparation tends to become more bitter to the taste as a general proposition?

A. I would say that in the case of water and quinine sulphate that would be true. But whether or not it is true under other conditions I could not say without making an actual experiment having that object in view. As a matter of fact Coco-Quinine and Quin-Coco are not bitter, and yet I am sure that there is at least some quinine sulphate in solution in both of them, and if the conclusion drawn by Mr. Rawle in his question is correct there ought to be some bitter taste to Coco-Quinine and Quin-Coco.

XQ121. But in such a case might not the masking ingredients of Coco-Quinine and Quin-Coco still disguise the bitterness?

A. I think that they undoubtedly do, but the same masking ingredients will have the same effect in other preparations.

XQ122. If in making up Coco-Quinine which I assume contains crystals of quinine sulphate, you should substitute for the crystals of quinine sulphate quinine sulphate in solution and put that into the mass, would you expect to find in the result a greater degree of bitterness than if you had used crystals of quinine sulphate?

A. I would not venture a guess on that, I would make the experiment and taste it and see, because quinine sulphate with the ingredients that apparently mask its bitterness acts so peculiarly in such preparations.

XQ123. I understand your line of reasoning to be in regard to the virtue of certain suspending agents that starch is a good suspending agent, because chocolate is a good suspending agent, and chocolate contains starch. Is that correct?

A. No.

XQ124. Wherein am I wrong?

A. Starch is a good suspending agent. Chocolate is apparently a good suspending agent, but not as good as starch. Chocolate does contain starch and other ingredients, but starch is the only ingredient that would tend to form the colloidal solution. Hence I reason that chocolate suspends by virtue of the starch that it contains.

XQ125. Is it not possible that nature has provided other ingredients in chocolate which at least assist in making a suspending agent and that it is not starch that does the whole thing?

A. Nature is very wonderful in her works and undoubtedly it is possible for her to do things that we do not understand and do not know. It is possible that there may be something in cocoa that suspends besides the starch, but I consider it extremely unlikely, highly improbable, and if it is there I do not know it.

XQ126. Do you think you are scientifically accurate in your answer to Q32 when you used these words, "The excellence of starch as a suspending medium is evidenced in Coco-Quinine and Quin-Coco in that it only suspends the quinine sulphate", &c.?

A. I think so.

XQ127. Would it not have been better in your answer to this question if you had qualified it as you apparently now do in your last two or three answers, and not merely spoken positively of starch as the suspending medium in Coco-Quinine and Quin-Coco?

A. No, I do not think so, because I know of no other suspending medium in the chocolate other than the starch and I have to confine myself to my knowledge.

XQ128. You have testified (Q30) that the statement by Dr. Beringer that in Bibbins No. 7 he found "only six small crystals of quinine", was "of absolutely no significance". Assume that this Bibbins No. 7 was made up with two grains of quinine sulphate to the teaspoonful, would not Dr. Beringer's microscopic

examination have discovered more than six small crystals of quinine"?

A. That question can only be satisfactorily answered if we know how many crystals of quinine are in two grains and if we know furthermore what fraction of a teaspoonful Mr. Beringer was looking at under the microscope. He looked at his miscroscopic field and saw six small crystals of quinine sulphate. I have not the faintest idea whether that corresponds to two grains per teaspoonful or half a grain per teaspoonful or ten grains per teaspoonful.

XQ129. Do you work much with the microscope?

A. I would not say that I work much with it.

XQ130. In the ordinary quinine sulphates of commerce sometimes called powdered, but yet in crystalline form, would there not be a very large number of crystals in two grains of it?

A. There would be quite a number.

XQ131. Will you please tell me what your method of tasting these samples was?

A. I have tasted the samples a number of times, and in different ways. I tasted them on different days and on the same day by removing some of the material from the stopper and tasting that, by dipping a glass rod into the material, withdrawing it and tasting what adhered to the glass rod, and by pouring some in the palm of my hand and tasting it from there by the tongue.

XQ132. Did you make notes of any of these tastings?

A. I made no notes of them.

XQ133. When did you do the tasting, covering what period?

A. Covering a period of from October 6th until December 2nd, 1917.

XQ134. You have referred to Dr. Beringer's microscopic work and said, as I remember, that the presence of tragacanth could not have been detected by him on the microscope. Is this what you meant to say?

A. As I remember correctly I said there was no evidence in Dr. Beringer's testimony that he had identified globules of tragacanth under the microscope.

XQ135. Do you now say that he could not by a microscope have detected the presence of tragacanth in the Bibbins samples?

A. Yes, I do not believe it is possible for anybody to identify globules of gum tragacanth under the microscope.

XQ136. You have referred to Mr. Bibbins ten experiments as you called it, all of which were more or less successful. I take it that you have no knowledge of how many experiments he made at the same time that were unsuccessful have you?

A. I have not.

XQ137. And he may have made six hundred and six without your knowing it?

A. Yes.

Cross-examination closed.

Re-direct examination.

By Mr. Bradford:

RDQ138. How many times have you had occasion to observe and taste the Bibbins samples from the Bibbins exhibit bottles which are on the table?

A. I have tasted them at least three different times and I have had four opportunities of observing them.

RDQ139. Have you ever noticed any difference between any one of these samples, either in its physical appearance or its chemical or pharmaceutical character, and the corresponding sample which was furnished to you by Mr. Bibbins.

A. I have not.

RDQ140. As I understand Mr. Rawle's examination on the subject of viscosity it was chiefly to determine standards and method. As I understand your testimony yesterday it was directed chiefly to

stating your determination of the comparative viscosity of these various samples and of Coco-Quinine and Quin-Coco. Is this correct?

A. That is correct.

Recess until 1.30.

After recess.

RDQ141. Have you the samples of the Bibbins syrups which you used in St. Louis for your assays and analyses? If so will you please produce them?

A. Yes, I have them. Here they are.

The witness here takes ten three ounce bottles from his sample case, each containing a portion of syrup and places them on the table in front of counsel.

RDQ142. I notice a label on each of these bottles and an inscription on each label and writing. Please state who made these inscriptions and whose handwriting it is?

A. The handwriting is mine. I wrote the labels and affixed them to the bottles.

RDQ143. When?

A. On October 6th, 1917.

Mr. Bradford: These bottles are offered in evidence and marked respectively, Plaintiff's Exhibit, Dr. Caspari Sample of Bibbins Syrup No. 1 to No. 10, inclusive.

Re-cross-examination.

By Mr. Rawle:

RXQ144. How full were these bottles when you originally poured the material into them?

A. They were practically all full when I received them, they were filled by Mr. Bibbins in my presence.

Deposition closed.

Charles E. Caspari.

J. B. WELDON, a witness called by and on behalf of the plaintiff having been first duly sworn, deposes and says as follows in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. J. B. Weldon, age 33, Woolsey, Georgia; practicing physician.

Q2. In this case a witness for defendant by the name of S. J. Nottingham when testifying in surrebuttal on June 8, 1917, in answer to Q7. made this statement: "I have never offered any preparation as a substitute for another". In answer to Q10. he also said "I never offered him or any one else Quin-Coco as a substitute for Coco-Quinine". Have you any knowledge of Mr. Nottingham's practices in soliciting orders for the Wm. R. Warner & Co., preparation that is not consistent with these answers and if so will you please state what you know relating any experience you have had with Mr. Nottingham in this respect?

MR. RAWLE: The question is objected to as inadmissible at this stage. The plaintiff having produced evidence in making out his prima facie case following the averments of the bill and called witnesses to testify to selling methods of the same S. J. Nottingham. S. J. Nottingham was called as a witness for the defendant and testified in denial of the statements made in regard to him by plaintiff's witnesses. Since then the plaintiff has taken rebuttal, the court has allowed the defendant to adduce additional evidence and since the defendant did so the plaintiff is now calling this witness and offering to produce by him further evidence apparently intended to attack the integrity of S. J. Nottingham. The evidence for this reason is objected to as irrelevant and inad-

missible and notice of motion to strike out with costs is given.

A. Something like four years ago I was introduced to Mr. Nottingham on a Central of Georgia train by a Dr. Tucker, if I remember correctly, as a salesman for the Wm. R. Warner & Co. He solicited my trade and among other things he asked the question did I use Lilly's Coco-Quinine. Answering him yes, he told me that he had a preparation similar to or as he said the same thing and would like to get me to try it, that it would produce the same results as Lilly's Coco-Quinine, that he had been so advised by men to whom he had sold, and that he would send me samples or advise the house to do so, and would like for me to try it out. The house afterwards sent the samples. I cannot remember now whether I ever used them or not. Possibly I did.

Q3. Did he ever call on you again?

A. He has but I cannot remember much of anything about it. He has solicited my trade and the house has written me more or less but I don't remember the circumstances but it appears to me that I have bought some of Warner's preparations, to the best of my memory, since that time.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ4. Are you what they call in the South a dispensing physician?

A. I am. I carry my own drugs, practically all.

XQ5. Who first mentioned this case to you and asked you to testify and when?

A. Sometime during last summer Mr. King, a representative of Eli Lilly & Co., selling me a bill of Coco-Quinine, made the remark have you ever used any Quin-Coco. I could not make an answer intelligently

and he made the remark that Eli Lilly & Co., and Wm. R. Warner were having a law suit.

XQ6. Did he arrange to have you come to Washington to testify in this case some weeks ago?

A. No, W. R. Bell a salesman for the same company made the arrangement.

XQ7. Will you tell me why you cared to leave your professional work and come this distance to testify in this case?

Objected to as immaterial.

A. I did not especially care to do this, but not having had any time away from home for the past four or five years and being requested by the said Bell that he thought that by coming and testifying in this case that I would possibly do Eli Lilly & Co., an especial favor and owing to the friendship existing between myself and the same company and Bell but no animosity toward any one, I considered after some persuasion and upon the said company being lenient as to the time I should come, I agreed to come.

XQ8. For your expenses and some compensation I suppose?

A. No compensation except expenses and what they saw fit.

XQ9. What territory has King as a Lilly salesman roughly?

Objected to as immaterial and not cross-examination.

A. I suppose the section around Atlanta.

XQ10. What territory has Bell?

Same objection.

A. I understand the city of Atlanta and suburbs.

Deposition closed.

JNO. B. WELDON.

F. C. ATKINSON, a witness called by and on behalf of the plaintiff having been first duly sworn, deposes and says as follows in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. F. C. Atkinson; aged 37, 2534 Broadway, Indianapolis, Indiana, Chemist for the American Hominy Company.

Q2. Please state the character and extent of your work, experience and education whereby you are qualified to testify as an expert in a case requiring the opinion of one having knowledge of the characteristics of fixed oils or vegetable and animal oils?

A. My college work was done at the Polytechnic Institute of Alabama, where in addition to taking the regular course in pharmaceutical chemistry I also pursued a special course in organic and pharmaceutical chemistry, leading to a Master of Science degree. After leaving college I began with the Southern Cotton Oil Company as an assistant in their head laboratory, later being made chemist in charge of their District laboratory, where I had the chemical control work of an oil refinery where from a half million to three quarters of a million pounds of cotton oil was refined daily, and also where we made from two to four million pounds of lard compound per week, the soap and glycerine works also, besides having the chemical control work for the several processes working up the by-products of the plant. Later it was necessary for me to take the complete work of the head laboratory for a short while just before I left that company. In January, 1908, I took up work with the American Hominy Company, the important work before me being to work out the details for refining corn oil. However before the end of the year matters came up that rendered it inadvisable to refine oils at that time and I went with

the McCadless Laboratories, of Atlanta, Georgia, as oil expert. This was October 1, 1908. I remained there until January, 1913, came back to the American Hominy Company where we manufacture fixed oils, mostly corn oil. That brings me up to the present time.

Q3. Dr. George M. Beringer, when called as a witness for defendant in surrebuttal in answer to Q95 testified as follows:

> "As a rule we look upon the use of two or more articles where one will answer the purpose as objectionable, because it is prone to introduce two articles of a different composition which may start decomposition per se between themselves, or render one or the other subject to a change. As an example, I may cite that it is well known that mixtures of oils become rancid much more quickly than the pure oils themselves."

In answer to XQ216 his attention was called to this answer and he was asked to define what mixtures he referred to. He replied:

> "Adulterated olive oil and almond oil become rancid very quickly."

He was then asked "adulterated with what". He replied "with lard oil and cotton seed oil or other common adulterants."

What is your opinion of the opinion here expressed by Dr. Beringer as to these oils?

A. It is rather a surprising statement that an expert should say that blended oils deteriorate more rapidly than a single oil. My experience has been that mixtures of olive oil and cotton seed oil do not deteriorate more rapidly than a single oil, and in fact if a sample of sweet cotton seed oil, by "sweet" I mean "neutral", has added to it a small proportion, say from five to twenty-five per cent. or even up to fifty

per cent for that matter, of olive oil the resulting mixture will remain sweet and free from rancidity much longer than the sample of cotton seed oil itself. I happen to have had considerable experience in blending oils, among which blends were cotton seed oil and olive oil. We certainly had no cases where the addition of olive oil made the cotton oil deteriorate any more rapidly than the cotton oil alone. It is a fact in my own observation that olive oil will remain sweet much longer than cotton oil or corn oil or any of the other vegetable oils that require refining. Now if olive oil is added to those it might really more properly be said that the olive oil acts as a preservative. The fact is the blended oil has keeping qualities intermediate between the keeping qualities of the single oils and the length of time which it will remain sweet is somewhat proportional to the quantities of the different oils entering into the mixture. The mixture perhaps becoming rancid somewhat more quickly than the olive oil but not so quickly as the pure cotton oil. In the case of the mixture of lard oil and olive oil both of which have good keeping qualities a mixture of the two would possess no very different properties in so far as the sweetness of the oil is concerned from the single oils used.

Q4. Then you do not consider that it is "well known" that mixtures of oils become rancid much more quickly than the pure oils themselves?

MR. RAWLE: The objection following Q5 of the testimony of Dr. Caspari is here repeated to apply to the preceding questions of this witness and to stand as against all following questions without being restated.

A. No, sir. I do not. I never heard of this before and it is different from my experience.

Direct examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ5. With what oils or classes of oils have you been concerned in your professional life chiefly and as a business?

A. First with cotton seed oil and with oleo sterrine which is made from the highest grade of beef tallow and used in the manufacture of the lard compounds commonly used as substitute for lard. I have also had considerable experience with corn oil and some experience with cocoanut oil. Most of my other experience then with oils has been in pressing small quantities of oils that are not commonly extracted for commercial purposes, the object of this work being to recover such oils as might be recovered profitably.

XQ6. What are these small quantities that you have sought to recover commercially?

A. Rice oil and cocoanut oil.

XQ7. Now is that the extent of your familiarity with oil in the larger sense?

A. You understand that my work with cotton oils and oleo sterrine was for the manufacture of lard compound, which is an industry of very large proportion and was at the time I was working with it. We also separated from cotton oil the so-called "sterrine" which is really to a large extent *palmatin* and which is used to a great extent in the oleomargarine industry. I have also had some experience hydrogenizing cotton oil and corn oil. And the experience referred to formerly in blending cotton oil with olive oil for making salad oils both for domestic use and for export.

XQ8. And these oils you have mentioned are all for food purposes, are they not?

A. Of course the large proportion of all the oils referred to are for food purposes but they are used also for medicinal purposes and if you call for a sweet oil in a drug store my understanding is you get one of these oils, namely cotton oil or corn oil, and of course

as you know olive oil is used for medicinal purposes.

XQ9. What experience have you had with a large number of oils used in strictly pharmaceutical business?

A. In addition to the oils named I have had experience with castor oil and sweet and bitter almond oil, orange oil, although the orange oil is a volatile oil; with olive oil, with lemon oil, citronelle oil, anise oil, turpentine oil, fennell oil, the oil from monarda punctata, known as horsemint I believe, then the oil from heart leaves, the oil from peppermint, spearmint, the oil from sweet bay, and perhaps a few other oils commonly used.

XQ10. Have you ever made these various other oils just named?

A. I have made several of them but not all of them.

XQ11. Whch ones?

A. I have prepared the oil from the monanda puntata. I have also prepared the oil from heart leaves. I have prepared the oils from deer tongue, a plant growing in the Southern States, and turpentine oil. I have prepared soy bean oil, corn oil and cotton oil, cocoanut oil.

XQ12. To what extent approximately have you made all these last named oils and when and under what circumstances?

A. I am making daily something like twenty thousand pounds of corn oil at the present time. I have made the oil from deer tongue in quantities of from one ounce to one pound when looking for a suitable oil to be used for a soap flavor. I have made oil of sweet bay in similar quantities and under similar conditions. Rice oil I extracted in quantities of about forty or fifty pounds and in this case was searching for an edible product. Cocoanut oil in quantities of one hundred to a thousand pounds per day to be used also for an edible product. Turpentine oil in quantities of

half to three pounds in placing the valuation on turpentine bearing materials.

XQ13. Please observe that I have been asking you about your experience in "oils used in strictly pharmaceutical business". I shall have to call you back to that question and ask you which of the oils you have named intended for use in strictly pharmaceutical business, you have manufactured?

MR. BRADFORD: Objected to as it is certainly not clear from previous questions that counsel's examination has been confined to the class of oils specified in his last question. Moreover unless this line of examination is for the purpose of testing the witness qualifications as an expert it is wholly incompetent, irrelevant and not cross-examination. The testimony of Dr. Beringer about which the witness was interrogated in direct examination was directed to certain specific oils and the direct-examination was confined to witness' opinion respecting Dr. Beringer's opinions as expressed in his testimony. If the purpose of these questions is to test the witness' qualifications no objection is made to them. Otherwise it is believed the objection is well made.

A. I will state that I am not manufacturing any oils on a manufacturing scale that are used strictly for pharmaceutical purposes. Such oils as I have manufactured enter into other lines as well as pharmaceutical.

XQ14. Then you mean that you have in a small way manufactured a little of certain oils which you understand are used in a strictly pharmaceutical way. Is that correct?

A. I have prepared a few and so far as I know enter only in pharmaceutical purposes, such as anise and fennell oils.

XQ15. And if you have manufactured any oils in the class that you believed to be used strictly in phar-

maceutical business has it not been in a small way and as a sort of experimental adjunct to your regular business?

A. It has.

XQ16. In the case of these small manufactures of strictly pharmaceutical oils have you ever blended them and experimented with the result of the blending?

A. I have done that only to the extent as was necessary to produce desirable odors from two or more single oils.

XQ17. State all the instances in which you have done that thing?

A. Orange and citronel is one combination.

XQ18. Any other?

A. There might be others but it has been a long time since I did any considerable work with oils that are used only in a pharmaceutical line. My experience has been with oils that are used for food purposes as well as pharmaceuticals.

XQ19. How long is it since you have had experience with the manufacture and blending of oils which you believe to be of a kind used strictly in pharmaceutical business?

A. It has certainly been six or eight years since I manufactured an oil that was used only in pharmaceutical business.

XQ20. Have you ever to any appreciable extent blended any of these strictly pharmaceutical oils and in a scientific way experimented upon them to observe their keeping effect when blended?

MR. BRADFORD: Further examination along this line is objected to as entirely improper, it not being cross-examination, the witness having thoroughly qualified himself to testify as to the matters inquired about and as a useless waste of time and for no other purpose which is apparent.

A. On strictly pharmaceutical oils, no.

XQ21. Then you do not consider yourself an expert on strictly pharmaceutical oils and the blending thereof do you?

Objection repeated.

A. Inasmuch as it is almost impossible to think of an oil as being strictly pharmaceutical I should say I am not an expert in strictly pharmaceutical oil.

XQ22. Specify the oils in connection with which you fairly believe yourself to be expert?

A. I am an expert in cotton seed oil, corn oil, olive oil, beef and hog fats, and mixtures of these several oils.

XQ23. Did I understand that you have always been a maker of oils rather than a user of them? Is that correct?

A. No, I make them and use them.

XQ24. Which oils do you use and how do you use them?

A. I use cotton oil, olive oil and corn oil at home, also butter fat and lard, occasionally peanut oil and cocoanut oil. Those are the principal oils I use.

XQ25. Can you specify any other use than that on your own domestic table?

A. No.

XQ26. Have you had any serious experience in pharmaceutical articles? Do you know anything about them in an expert way?

A. My chief experience with oils or fats used in pharmaceutical preparations has been from the standpoint of the analysist, having been called upon while in commercial work to make analyses of pharmaceutical preparations containing oil or fat.

XQ27. To any considerable extent?

A. No.

XQ28. Are you a member of the American Chemical Society?

A. I am.

Re-direct-examination.

By Mr. Bradford:

RDQ29. Are the oils mentioned by Dr. Beringer namely, olive oil, cotton seed oil, almond oil and lard oil used exclusively in pharmaceuticals?

A. No, sir. By far the largest proportions of these oils are used in food products or for food purposes.

RDQ30. Are not most of the fixed oils closely related in chemical composition?

A. Yes, essentially most of these oils are the chemical compound known as olein.

RDQ31. Have you held any offices in the American Chemical Society and if so what?

A. Yes, one year I was Vice President of the Indiana section of the American Chemical Society. Another year I was a member of the Council of the American Chemical Society. Another year I served as President of the Indiana section of the American Chemical Society. I am now serving a second term as President of the Indiana section of the Society.

RDQ32. Are you a member or have you ever held office in any other scientific society?

A. I am a member of the Society of Chemical Industry, the head office of which is in London. I am also a member of the Deutsches Chemisches Gesellschaft. I am also a member of the Verein Deutsche Chemicer and I am a member of the Society of Distillers and Sugar Chemists of France.

RDQ33. Have you ever served on any important scientific committees and if so what?

A. I served on a committee to draw up constitution and by-laws for the Society of Commercial Analysists, which is now known as the Society of Cotton Products Analysists.

RDQ34. Notwithstanding Mr. Rawle's long cross-examination respecting oils which so far as Mr. Beringer's testimony reveals he is not familiar with, do you still say that as far as your knowledge goes it is

not a well known fact that the mixtures of the oils he specified become rancid much more quickly than the pure oils themselves?

MR. RAWLE: Objected to as the witness has declined to consider himself as expert and has admittedly had very little experience in respect to pharmaceutical oils which are the only kind involved in this litigation. And further objected to for the reference to the cross-examination and Mr. Beringer's lack of knowledge of oils as stated in the question.

MR. BRADFORD: No apologies are made for reference to the long cross-examination. Perhaps the reference to Dr. Beringer was not quite proper in the question and it is withdrawn. The statement by counsel in his objection that witness has not qualified as an expert respecting the oils referred to by Dr. Beringer certainly is unjustifiable.

A. I certainly say so.

Deposition closed.

F. C. ATKINSON.

ANDREW L. WINTON, a witness called by and on behalf of the plaintiff having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Andrew L. Winton, age 53, Wilton, Connecticut, chemist and microscopist.

Q2. Please state the extent and character of your work and experience and education by which you are qualified to testify as an expert in cases requiring knowledge of chemistry and examination of specimens under the microscope?

A. I was graduated from Yale University first

with the degree of Ph. B. and later with the degree of Ph. D. I have also studied microscopy, at the Pharmacological Institute, Graz University, Austria. For twenty three years I was employed as chemist at the Connecticut Agricultural Experiment Station, New Haven, Conn., during eighteen years of which time I was in charge of the analytical laboratory. I also taught food analysis, agricultural analysis, approximate organic analysis and microscopy at Yale. For seven years I was chief of the Chicago Laboratory of the United States Department of Agriculture, Bureau of Chemistry, the laboratory being known as the Food and Drug Inspection Laboratory. Just before I retired from the Government service I was appointed chemist in charge of food investigations. I have written numerous papers on chemical analysis, microscopy and kindred subjects.

Q3. Have you done any literary work or written any books on scientific subjects and if so what?

A. I am author of the Microscopy of Vegetable Foods, 1916, John Wiley & Sons, Inc., New York; Chapman & Hall, London. This has run through two editions; a Course of Food Analysis published during the present year; I am the translator of Hanusek's Microscopy of Technical Products and the reviser of Leach's Food Inspection and Analysis, the latter having been revised four times counting editions and thousands of editions, and I am now working on an extensive revision.

Q4. What scientific societies are you a member of and have you held any official connection with any and on what important committee assignments?

A. I am a member of the American Chemical Society. During my official career a member of the Association of Official Agricultural Chemists, of which latter association I was president in 1897 or 1898. I am an honorary member of the Philadelphia College of Pharmacy.

Q5. You see before you quite a number of bottles containing preparations of different colors and descriptions. Ten of them are exhibits in the case and are commonly referred to as Bibbins specimens or Bibbins Samples from 1 to 10. There is also a bottle of plaintiff's product Coco-Quinine and a bottle of defendant's product Quin-Coco and the same preparations in plain or flint glass bottles similar to those in which the Bibbins samples are contained. I will ask you first if you have before today had opportunity to see and examine the exhibits and for what purpose and to what extent?

MR. RAWLE: Objected to as irregular and inadmissible at this stage of the cause, the matter inquired of having been part of the case set up in the Bill and gone into by witnesses in making out the prima facie case under the Bill.

Notice of motion to strike out with costs is given.

A. I have seen on several occasions the ten samples of the Bibbin's preparations, at the office of Bradford and Doolittle, Indianapolis. I also received on August 28, 1917, portions of these ten preparations from the hands of Mr. Bibbins. These ten portions or subsamples were used in my examinations and I have with me the remnants of these portions. On receiving the ten Bibbins samples I was asked by Dr. Eldred of the Eli Lilly Company to make suitable microscopic examinations of the same and certain other suitable tests touching on the points brought out in the testimony of Mr. Beringer. In regard to the samples of Coco-Quinine and Quin-Coco I have seen these two samples in the original bottles and also the portions in the flint glass bottles, also at the office of Bradford and Doolittle in this city.

Q6. Referring to the preparation Coco-Quinine and Quin-Coco will you please explain the character of examination you made of these products?

A. I made microscopical examinations of samples of both products obtained in the open market. Three samples of Coco-Quinine examined were purchased by me in Boston, Mass., and New York City, in original pint bottles. Of the three samples of Quin-Coco which I examined one was bought by me in an original pint bottle, at Westport, Conn., but as the dealer did not have an original package he ordered the same for me from Wm. R. Warner & Co., Philadelphia, and delivered it to me in its original form, to wit, an original pint bottle. Of the two remaining samples, one was received in its original unopened package from Dr. Caspari, of St. Louis, November 30, 1917, and the other in the original bottle which however, had been opened and sealed, from Mr. Bibbins. In addition to a microscopical examination I tested the samples for acidity and also examined them with reference to the suspension of the quinine sulphate crystals after standing for different periods of time. I also tasted the samples both the ten Bibbins samples and the commercial preparations. What I have said about the examination of the Coco-Quinine and Quin-Coco applies also to the ten Bibbins samples.

MR. BRADFORD: It is agreed tha the objection by counsel for defendant following Q5 may stand to all questions and answers of this witness' deposition with the same force and effect as if repeated following each question or answer. Also the notice.

MR. BRADFORD: The bottles of Coco-Quinine produced by the witness are offered in evidence and marked Plaintiff's Exhibit, Winton Bottle of Coco-Quinine Bottle No. 1, No. 2 and No. 3, respectively. The bottles of Quin-Coco produced by the witness are offered in evidence and marked respectively Plaintiff's Exhibit, Winton Quin-Coco Bottle, No. 4, No. 6 and No. 8.

Q7. In answer to Q8 Dr. Beringer stated respecting the acidity of the several Bibbins samples that he tested them by taking five cubic centimeters of each specimen, shaking it up with ten cubic centimeters of distilled water, allowing the sediment to subside, then testing the supernatant liquid with litmus paper. By such a test he discovered that each of these samples was in his judgment acid, some more acid than others. What have you to say as to Dr. Beringer's experiments and his opinion of them?

A. The litmus paper test is recognized as merely a qualitative test for acidity and not as a quantitative test.

Q8. Dr. Beringer also testified that he discovered that each of these samples was bitter, some of them decidedly bitter, and gave it as his opinion that this bitterness resulted from the acidity which he discovered in them. What have you to say as to this?

MR. RAWLE: The question is further objected to as not properly representing what Dr. Beringer testified to. Dr. Beringer testified that the acidity caused dilution of the quinine sulphate and that in turn caused bitterness.

A. In my opinion the acidity of the samples as determined by the litmus paper test is of no value whatever, in explaining the bitterness or absence of bitterness in any of these samples.

Q9. Is your opinion based upon any experiments you made, and if so, will you state what these experiments were and the results you obtained?

A. I tested all ten Bibbins samples with litmus paper and found that each and every one gave an acid reaction, the intensity of the coloration being the same in all of the samples. I also tasted the ten samples and found that four of them, namely Nos. 2, 4, 5 and 6, were bitterless, quite as bitterless as Coco-Quinine or Quin-Coco. Nos. 1 and 9 were slightly bitter, but still to my palate, which through years of practical experi-

ence as a sufferer from diseases for which quinine is a remedy, had become accustomed to the intense bitter of quinine, were very acceptable. Four of the samples, Nos. 3, 8, 7 and 10, were distinctly bitter. I name them in the order of their bitterness as determined by my tasting. From these examinations as to acidity and bitterness I am forced to the conclusion that there is no connection whatever between the results by the two tests.

Q10. Did you test Coco-Quinine and Quin-Coco for acidity and if so what did you discover?

A. I did. I discovered that both preparations were acid to litmus paper and gave quite as strong color reactions as the ten Bibbins samples. I will say that while a preparation or solution containing a very minute quantity of acid may show with litmus paper only a faint red color that when the quantity of acid is considerable, although slight, the color is indistinguishable from that when the amount is large. In other words when the quantity of acid in the preparation exceeds a certain very small amount the reaction of test paper bears no relation to the amount, and this is recognized everywhere in chemical laboratories. Test paper as the name indicates is merely for testing the reaction. It is not for a quantitative determination and is not even a rough test for the amount.

Q11. In answer to Q24 Dr. Beringer stated respecting Specimen No. 1 that the acidity developed in the specimen brings out the bitterness of the quinine perceptibly. I gather from your previous answers that this is not in accord with your opinion or the result of your tests?

A. The sample is slightly bitter. It is distinctly acid. The fact that it is distinctly acid is absolutely no proof or even indication that the sample should be bitter.

Q12. Did you make any further or other tests, whereby you obtained further evidence that acidity

does not cause the bitterness in these samples? If so will you please explain?

A. To a sample of Coco-Quinine I added sufficient glacial acetic acid to form one per cent by volume of the mixture. This mixture I shook thoroughly, then examined it microscopically and tasted it. The microscopic appearance did not differ from the original Coco-Quinine. In taste it was distinctly sour but it was no more bitter than the Coco-Quinine. Standard vinegar contains at least four per cent by weight of acetic acid. The quantity present in the mixture which I made contained one per cent by volume, which is slightly different from the per cent by weight, but not sufficiently different to alter a conclusion that Coco-Quinine acidified with acetic acid so as to be about one quarter as sour as standard vinegar is quite as bitterless to my palate as Coco-Quinine. I made this test immediately after preparing the mixture and again over two months later. The results being the same in both cases.

Q13. Dr. Beringer stated in answer to Q17 that in the preparations of the character we are considering that the suspending material must produce a uniform, homogeneous liquid that does not separate out, that does not undergo subsequent change, that it is not acid when first prepared and does not become acid on keeping, that remains permanently as a uniform, homogeneous suspending liquid, even after keeping for some time, as necessarily would be done in a package offered to the trade. Bearing in mind Dr. Beringer's requirements for a suspending medium for such a preparation are the conditions fulfilled in Coco-Quinine or Quin-Coco?

A. They are not. While both preparations after shaking are uniform, at least sufficiently so to permit the accurate dispensing and administration of the preparation, they do not remain so on standing. As regards the second point I have no evidence that they

undergo chemical change on keeping, but they do lose their homogeneity on standing undisturbed. Both preparations are distinctly acid and remain acid on keeping. They do not either of them remain permanently as a uniform homogeneous suspending liquid, assuming in the latter case that by liquid he means both substances in solution and substances in suspension. The portion in solution quite probably remains the same both in the top and in the bottom of the bottle, but the substances in suspension do not remain uniformly distributed. If they did the label "shake well" which I find on the samples of Coco-Quinine and the labels "shake well before using" which I find on the bottles of Quin-Coco would be a flagrant waste of paper pulp and printer's ink.

Q14. Did you find any evidence that the quinine crystals had gone into solution in any one of the Bibbins samples.

A. I have no direct scientific evidence but the fact that all of them are aqueous preparations and that quinine is slightly soluble in water, to my mind was sufficient evidence that a portion of the quinine must have been in solution.

Q15. Is this true to the same or approximately the same extent in Coco-Quinine and Quin-Coco?

A. It is. All of the preparations both the ten Bibbins samples and the six samples of the commercial products being saturated solutions of quinine salt with other substances in solution or suspension.

Q16. I show you Q20 of the Beringer deposition and ask you to read his answer thereto and express your opinion of his conclusions as there stated?

A. It is true as he states that in the chocolate quinine syrups Quin-Coco and Coco-Quinine the crystalline structure of the quinine sulphate was very evident, quite apparent. He states further in a number of specimens examined of these ten samples the crystals were more or less attacked, what you might call eroded

surfaces, showing that the crystals had been acted on by the suspending liquid and had partly undergone solution. It is true I found in my examination that the four preparations which I found to be distinctly bitter, to wit, Nos. 3, 8, 7 and 10 had undergone changes and the crystals differ in appearance from the normal quinine sulphate crystals of Coco-Quinine, Quin-Coco and the remaining six of the Bibbin samples. To say however that they are eroded appears to my mind quite erroneous. The word "erosion" is used commonly in the mineralogical or geological sense. It refers to the action of the elements on rocks and crystals, whereby mechanically a portion is removed. In the present case the crystals are surrounded by a liquid which has more or less of a solvent action and may affect the crystals in some other way. I found no evidence whatever to support Mr. Beringer's contention that the crystals had partly undergone solution beyond what they had undergone in the case of the other preparations. The fact that they had been acted on was no proof that they had at the same time gone into solution beyond the amount first dissolved. Dr. Beringer offers no evidence whatever that they have undergone this additional solution. In the final sentence he states in one specimen the quinine was practically entirely dissolved; in the others more or less so. In my own experiments I obtained no evidence that the quinine was practically entirely dissolved, nor did I in any case secure any evidence whatever that the quinine was dissolved any more than was true in the normal commercial preparations, both Coco-Quinine and Quin-Coco, or the other Bibbins samples. A bitter taste more or less pronounced is, to be sure, evidence that quinine is in solution, but it is no evidence that it is any more in solution than in the commercal preparations named which are quite bitterless in taste.

Q17. In answer to Q58 Dr. Beringer defined eroded as a phrase that is used in chemical and micro-

scopical technology to indicate an action of some chemical to the body or surface by which you have indentations or roughened surfaces. What have you to say as to this?

A. I would say that an erosion of a rock or a mineral might be defined in something that way and that perhaps it would also apply to a metallic surface or some similar substance. I am unfamiliar with the term as used in chemical and microscopic technology as applied to the action of a solution on crystals in suspension, especially as in the present case where there is no action of a nature such as he names.

Q18. In answer to Q23 Dr. Beringer stated respecting Sample No. 1 "The glass now shows some separation of the suspending material tragacanth and under the microscope it showed some crystals of quinine sulphate; separated portions of tragacanth mucilage and quince-seed mucilage were unequally distributed throughout the field." Please state the result of your examination and your opinion respecting this testimony by Dr. Beringer.

A. I was unable to note any separation of the suspending material which appeared to be tragacanth, nor was I able under the microscope either immediately after shaking or after standing undisturbed for five weeks, to note any separation of the quinine sulphate crystals.

Q19. Dr. Beringer also stated in the same answer that tragacanth does not form a solution but simply continues to swell and swell and make an uneven mucilage. On cross-examination he was asked how long tragacanth would continue to swell and swell and he replied indefinitely. What have you to say as to this?

A. It is well known that tragacanth does not go into a true solution, but rather into a colloidal solution and that some time is required for it to reach this latter condition. It is not true however that the process of swelling will continue indefinitely. It stops

when the maximum action is attained and an equilibrium reached.

Q20. I ask you to read Dr. Beringer's answer to Q27, respecting Specimen No. 2 and express your views respecting his conclusions as there stated about this particular specimen?

A. I was unable to verify the statement that there was a marked separation in this sample, a thin upper layer and a thicker lower layer. After standing five weeks undisturbed I could not either with the naked eye or with the compound microscope detect material separation of any of the constituents. The material appeared remarkably uniform, smooth so to speak to the naked eye, and under the microscope there was a uniform distribution of the quinine crystals and no noticeable separation of any kind. I did not note a separation of the tolu in resinous masses on the sides of the bottle. To be sure all the preparations will show a small amount adhering to the glass, but I do not consider that, when the adhering portion is in a finely divided condition, is any indication of the lack of homogeneity. I failed to find any evidence of gelatin separating out. As regards the acid reaction this as well as all of the other Bibbins samples and the samples of Coco-Quinine and Quin-Coco was acid to litmus paper. I believe that in this sample as in all of the other Bibbins samples even after standing five weeks the proper amount of quinine could be obtained by merely pouring out from the bottle into a teaspoon without mixing, that the shake label for a length of time of standing such as I have stated would not be necessary. Even admitting that this sample was not absolutely uniform in every degree it approaches much more nearly that condition than the commercial cocoa products in question, which could not be accurately dispensed or administered even after a few days standing, without shaking. I was unable in this sample to obtain any evidence of incomplete distribution of the

quinine sulphate after standing five weeks, but in every test of the cocoa preparations I secured such evidence.

Q21. How about Dr. Beringer's opinion of the taste of this specimen No. 2 as expressed in his answer to the next question?

A. He states the taste was decidedly bitter. I could detect no bitterness. In fact I considered the product delicious. I should state at this time that in my experience in tasting quinine preparations in suspension that after some minutes the bitter taste can be detected, and in all cases when I make the statement that the preparation is bitterless I refer to the taste sensation immediately after swallowing the product and for a short time thereafter. If I may be allowed to state my own personal experience in taking these preparations as a medicine I find the sensation of Coco-Quinine and Quin-Coco very agreeable at first and I experience no disagreeable sensation whatever if immediately after I eat or drink, so as to remove any of the medicine from the nerve ends. I found sample No. 2 quite as bitterless treated in the same manner as Coco-Quinine and Quin-Coco. For a cold or similar affection I have used Coco-Quinine taken just before going to bed. It has been my experience that a few minutes after taking the dose if I do not take the precautions above stated the bitter taste will come in my mouth and remain all night.

Q22. In answer to Q26 Dr. Beringer stated that separation and unevenness indicated additional decomposition. What is your opinion of this?

A. I examined these preparations sometime after Dr. Beringer made his examination and found them remarkably uniform and even, more so than Coco-Quinine and Quin-Coco. They had a smooth appearance and I was unable to detect separation and unevenness other than a very slight separation on the surface in the case of No. 2 on standing five weeks, to which I will refer later and in the case of No. 5 on

standing five weeks. This slight separation, a kind of watery appearance on the surface, was evident to the naked eye but it did not extend down into the preparation sufficiently so that with the microscope I could distinguish a portion removed from the top of the preparation and a portion removed from the bottom by the number of quinine crystals.

Q23. As a general question do separation and unevenness in pharmaceuticals indicate decomposition?

A. They do not. Separation and unevenness might indicate decomposition, but of themselves without further indications they would be due to mechanical or physical causes. Decomposition such as fermentation, putrefaction, growth of molds, and other changes of that sort, would be evidenced by certain changes such as formation of bubbles, moldy appearance on the surface, and so on. But an unevenness in the absence of any evidence of biological change or chemical change whether or not induced by biological change would be inferred to be mechanical, or physical. In the case of Coco-Quinine and Quin-Coco there is no evidence of decomposition either biological or purely chemical on standing, but there is distinct evidence of mechanical separation, and consequently a lack of uniformity.

Q24. In XQ153 Dr. Beringer was asked if separation could be brought about by standing. He answered "No, not in a perfect preparation. That is evidence of the imperfect suspension." What have you to say as to this?

A. I would say judged by that standard Coco-Quinine and Quin-Coco are imperfect preparations. It is evidence of an imperfect preparation if remaining in suspension for an indefinite time is essential. The question remains whether Coco-Quinine or Quin-Coco are imperfect preparations because they require shaking before dispensing or administering. Personally I do not consider it necessary to make a standard for a

preparation of this sort that the preparation does not need shaking. There are many medicinal preparations and technical mixtures which are used successfully that require thorough mixing before use. I think of furniture polish of the kinds I have seen where there is a separation in layers even after standing for a short time. These are shaken and then used. I have never heard objection made to such preparations because they require shaking. I have never heard or considered that they were not perfect preparations because they require shaking. If however Dr. Beringer establishes as necessary a condition such as requires no mixing my only conclusion is that Coco-Quinine and Quin-Coco do not comply with that requirement but that the Bibbins samples do comply in a very large degree, that is to say on standing five weeks they could be used even without mixing.

Recess until 7.45 P. M.

After recess.

Q25. Were any of the other samples which you used in your experiments furnished you by Dr. Caspari and if so will you produce them?

A. There is one other, a three ounce bottle containing Quin-Coco, bearing his label "Quin-Coco C. E. C. 1, Lot No. 186004." I obtained this sample from Dr. Caspari November 30th, 1917. He gave it to me here in Indianapolis and I have used it in my tests for the purpose of comparing its settling action with that of the three other samples of Quin-Coco previously mentioned.

MR. BRADFORD: The bottle referred to is produced and offered in evidence and marked Plaintiff's Exhibit, Winton Quin-Coco Sample No. 7.

The witness is here excused for a few moments for the purpose of recalling Dr. Caspari to identify these bottles.

DR. CHARLES E. CASPARI, recalled.

By MR. BRADFORD:

Q1. In Dr. Winton's testimony he has referred to certain samples of Quin-Coco obtained from you. I ask you if you can identify the Sample No. 6 and if so state where you obtained it and the circumstances under which you gave it to Dr. Winton if you did?

A. I identify this sample marked WVI as one which I purchased in St. Louis, an original package, in the open market, on the 28th of November, 1917, and which I handed to Dr. Winton, seal unbroken in Indianapolis on Nov. 30, 1917. I identify it by my initials on it and the date I purchased it.

Q2. I also show you Winton Quin-Coco Sample No. 7 and ask you if you can identify this bottle and state the circumstances under which it was given to Dr. Winton?

A. I identify this sample as one which I handed to Dr. Winton in Indianapolis on November 30, 1917. The contents of this bottle were placed in it by me from the original bottle of Quin-Coco which I purchased as an original package in the open market, in St. Louis about August 1st, 1917. I identify it by my initials and hand writing on the label and lot number.

WITNESS CASPARI is excused and DR. WINTON recalled.

DR. WINTON, recalled.

Q26. Have you any other sample bottles which you have used in your experiments and if so will you produce them?

A. I have the ten bottles of the Bibbins Samples numbered from 1 to 10, bearing my initials, and each containing what was left of the sample after making my examination.

MR. BRADFORD: Said bottles with their con-

tents are offered in evidence and marked respectively Plaintiff's Exhibit, Winton Specimens of Bibbins Samples 1 to 10.

Q27. Please explain where you obtained these samples, when and from whom?

A. I received these samples from the hands of Mr. Bibbins, August 28, 1917, in Indianapolis. He told me at the time they were bottles filled from the same bottles as were the original Bibbins Samples, Plaintiff's Exhibit, Bibbins Sample Syrup No. 1 to No. 10, respectively.

Q28. Did you make any record of your tests in the way of diagrams or otherwise, and if so will you please produce them and explain what they represent?

A. I made sedimentation tests on the ten Bibbins samples and on the three Coco-Quinine Samples, No. 1, No. 2 and No. 3, and one Quin-Coco sample, No. 4, which I purchased in Westport, Connecticut. I was unable to make these tests on the remaining three samples of Quin-Coco for the reason that they did not come into my hands until a few days ago. I will state at this time that this sample of Quin-Coco No. 4 behaved somewhat differently from the remaining three samples of Quin-Coco and I note that the lot number on this Sample No. 4 is very different from the lot numbers on the remaining three. Furthermore that it is in a different style of type. Again this Sample No. 4 has a small label of a reddish or orange color, "Net Contents 16 Fld ozs" and a sticker on the cork printed on blue paper bearing the monogram S. H. & Co. etc. It would seem that there may be some relation between the deportment of this sample No. 4 as compared with the others and the difference in the numbering and labeling. Evidently it was made under somewhat different conditions than the three samples collected in St. Louis, which I obtained from Dr. Caspari and Mr. Bibbins. As already stated this sample No. 4 was obtained through the Westport druggist direct from Wm.

R. Warner & Co., in Philadelphia. The history of these other samples of Quin-Coco No. 6, No. 7 and No. 8, is unknown to me.

On this sheet I show diagrammatically the results of sedimentation tests where all of the samples were allowed to remain undisturbed for thirty-five days. The bottles used were of approximately three ounce capacity and I was guided in my selection by the bottles in which the Bibbins samples were furnished me. To explain more fully the Bibbins samples were allowed to stand in the bottles in which they were furnished me and in order to have the conditions the same with the samples of Coco-Quinine and Quin-Coco I selected bottles of the same size and shape and used amounts of the material approximately the same. After standing thirty-five days I noted what separation had taken place, measuring with a millimeter ruler the heighth of the column or in case separation took place of the two columns. These measurements are shown on the sheet in each case at the right of the bottle. For example in Coco-Quinine No. 1 the figure at the right "26" shows the height of the upper layer which separated. The figure "6" the height of the lower layer. The sum of the two "32", representing the total height of the liquid in the bottle. I have written on the diagrams of the bottles the conditions observed after the thirty-five days. For example, in this first sample I have written "Dark Brown, Granular, Many Crystals". This means that this column, 26 millimeters high, was of a dark brown color, a granular condition to the naked eye, and under the microscope was found to contain many crystals of quinine sulphate. The transverse line below indicates where this layer ended. Between that and the bottom of the bottle is a layer marked "Light Brown, muddy, few crystals". This refers to the color of this lower layer, its muddy appearance and the fact that under the microscope very few crystals of quinine sulphate were

present. This lower layer contained not only very few quinine crystals but also hardly any of the solid particles of the cocoa. These solid particles being almost entirely in the layer above it and give to that layer its dark brown, granular appearance. The muddy appearance in the lower layer is due to a very small quantity of finely suspended material.

The two other samples of Coco-Quinine No. 2 and No. 3, show the same condition as the first except that the heights of the layers differ somewhat. In Quin-Coco No. 4, at the top right hand corner of the sheet shows a very different appearance. I noted after the first few days of standing that this sample began to show a curdled appearance, that is, a separation into a flocculent condition and into watery streaks or pockets. This same condition has sometimes been observed in Coco-Quinine but in a lesser degree. After standing thirty-five days these watery pockets or streaks had risen to near the surface of the bottle, combining to form a large pocket of irregular shape. At the very surface of the bottle was a layer 7 millimeters high of red brown color, granular appearance, containing many crystals of quinine sulphate. At the bottom of the bottle was a layer of a dark brown granular appearance also containing many crystals of quinine sulphate. The large pocket referred to contained only a few crystals. It corresponded in its general appearance with the lower layer of the Coco-Quinine preparation, but because of some difference in the make-up of the material, specific gravity and other unknown reasons, this rose to near the surface. The fact that the very surface layer was red brown, whereas the lower layer was dark brown, shows that there was a mechanical separation of the insoluble matter according to specific gravity, the watery layer containing the few crystals choosing to repose in between. I will state at this time that later experiments with the samples examined at Indianapolis showed that these latter behaved practi-

cally the same as Coco-Quinine, the muddy or watery layer settling to the bottom. The remainder of this sheet shows the results of this sedimentation test on the ten Bibbins samples. In only two of the samples was there any noticeable separation into layers on standing thirty-five days. These were No. 2, which showed a watery layer at the surface, 1.5 millimeters high and No. 5, which showed a watery layer at the surface 2 millimeters high. These watery layers in No. 2 and No. 5 I was able to measure with my millimeter ruler, but they were not thick enough or rather high enough so that I could detect on microscopic examination any difference in the number of crystals present at the top and at the bottom of the bottle. Microscopic examination of all ten Bibbins samples showed no determinable difference between the number of crystals in the top and in the bottom of the bottles, even in the case as already stated of No. 2 and No. 5, where with the naked eye a thin watery layer was detectable. In one case, however, Bibbins No. 4 although no stratification was evident to the naked eye I noted after microscopic examination that the crystals at the bottom of the bottle were of a larger size than any I found at the top, but that crystals were distributed throughout. In this sheet it should be noted that the heights of the different layers are roughly to scale but that the bottles are made half size, in order that all could go on one sheet for ready reference. In order that there might be no misunderstanding as to this point on the second sheet I show the bottles natural size and the layer to scale. It should be noted that the diameter of the bottle does not have any bearing on the height of the columns or layers.

MR. BRADFORD: The sheets or diagrams referred to by the witness in his last answer are offered in evidence and marked respectively Plaintiff's Exhibits, Winton Diagram No. 1 and Winton Diagram No. 2.

Q29. Have you any other record of your tests and if so will you put it in the record and explain it?

A. During the last week since I came to Indianapolis I made sedimentation tests like the preceding, using however only Coco-Quinine and Quin-Coco specimens. These specimens included the four specimens represented on the diagram mentioned, to wit, Coco-Quinine No. 1, No. 2 and No. 3, and Quin-Coco No. 4, and in addition the three samples of Quin-Coco No. 6, No. 7 and No. 8. Time would permit only of a three days' experiment and I have not had opportunity to give the results in diagrammatic form but only in figures, representing the height in millimeters of the top and bottom layers. These figures are as follows:

Coco-Quinine I, top 32 bottom 3; Coco-Quinine II, top 34, bottom 2; Coco-Quinine III, top 33, bottom 2; Quin-Coco IV, top 32, bottom 3; Quin-Coco VII, top 28, bottom 7; Quin-Coco VIII, top 32, bottom 3. In all cases the top layers contained many crystals of quinine and the bottom layer very few. Quin-Coco No. 4 after three days did not show distinct layers but a very marked curdled appearance which was observed in the early stages of the previous sedimentation tests. The crystals were more evenly distributed through the entire liquid although whenever I was able with a pipet to remove a portion from one of the pockets the number was there found to be less. It is clearly evident that the flocculent and the watery part differed in the number of quinine crystals but that this did not exist on a large scale until the pockets united as in the former experiment.

Q30. Dr. Beringer in testifying respecting the Bibbins Sample No. 3 stated that under the microscope the crystals of quinine were shown to be distinctly eroded or eaten away? What have you to say as to this?

A. I noticed in this sample as well as in samples 8, 7 and 10, that the crystals of quinine were more or

less changed. To say that they were eroded does not at all express the conditions. In No. 3 the crystals were enveloped at least at the ends by an oily substance. In No. 8 this oily substance was in greater amount and the crystals were smaller correspondingly. In No. 7 the change was still further advanced, the crystals being greatly reduced in size and the oily material increased correspondingly in quantity. And in No. 10 there were no crystals at all of quinine sulphate, all of them having gone into the oily condition which has been noted. The crystals were not and could not be bone-shaped. Crystals do not deport themselves in that way. Obviously what Mr. Beringer considered bone-shaped crystals were merely crystals more or less enveloped in this oily substance. No one who has had experience with the microscope could fail to note the difference between the crystals themselves and this oily substance, and the progressive change establishes beyond question the fact that the quinine has gradually changed due to some unknown reason, from the crystalline form into an oily yellowish transformation product, so that the appearance in No. 10 instead of being that of quinine crystals in suspension was that of a yellow, oily substance suspended in globular drops. There is no evidence whatever that because the crystals of quinine sulphate disappeared as such they went into solution, or, in other words, that the amount of quinine sulphate in solution was increased by this change. The fact that these four samples were distinctly bitter may be correlated with the change in the quinine crystals but no evidence has been presented so far as I have read Dr. Beringer's testimony to that effect.

Q31. In your answer you have covered Dr. Beringer's testimony respecting the condition of quinine crystals as he found it in Bibbins Samples 3, 7, 8 and 10. I call your attention to Beringer's sketch and ask you to observe his illustration of the bone-shaped, as he

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termed them, eroded crystals of quinine sulphate as he found them in samples Nos. 7 and 8, and comment thereon, expressing your opinion as to the value of this evidence?

A. I can not see how any one experienced in microscopic work could interpret the phenomena I have referred to, namely the coating or enveloping of the crystals, particularly at the ends, with the transformation substance, as being due to eroded or bone-shaped crystals. I can see that an unskilled observer might not distinguish between the two elements, namely, the crystals proper and the yellow, oily substance, which gives the peculiar appearance in samples Nos. 7 and 8. It is still more inexplicable how a microscopist could state that in No. 10 all the crystals had gone into solution, when as a matter of fact they had merely gone into this oily transformation product and there is no evidence whatever that a greater amount has gone into solution than already existed before the changes.

Q32. I call your attention to Dr. Beringer's answer to Qs. 40 and 41 respecting Specimen No. 4 and ask you to express your opinion respecting the correctness of his conclusions as there stated, bearing in mind particularly what he has said about his microscopic examination and also what he says in answer to Q41 about the cafe-tannic acid?

A. He states this showed some precipitation on the bottle, still evidenced on the sides of the bottle and bottom, poured like mucilage, having the flavor and characteristics of dextrine. I failed to note any such precipitation myself, the sample being remarkably homogeneous. And I am quite unacquainted with dextrine that precipitates in such a manner. I am at a loss to know how the flavor of such a precipitate could be determined when I have been unable to note even a separation. Furthermore it is hard to understand how such a substance could be identified as dextrine by its taste even if secured in the form of a precipitate from

a preparation so highly flavored with other constituents. Dextrine is practically a tasteless substance and its characteristics even when separated in pure form could be determined only by a skilled chemist. It has practically no flavor. It does have certain polariscopic and other physical as well as chemical characteristics belonging to this carbohydrate. He further states "The slight flavor of coffee which was first perceptible was soon drowned out by the extreme bitterness of the quinine."

I have already testified that this is one of the Bibbins samples which was quite as bitterless as Coco-Quinine. I would not call any of these Bibbins samples extremely bitter. I would however call a sample of suspended quinine sulphate in a chocolate saccharine medium which was submitted to me, such as Complainant's Exhibit Bottle No. 2, extremely bitter. I tasted that sample and for some time afterward suffered excruciating torment, showing that the nerves of my mouth are quite susceptible to such an intense bitter. He refers in the next sentence to the broken down and eroded quinine crystals. This point I have already considered. In this sample I saw no change whatever in the quinine crystals. In only four out of the ten Bibbins samples was the quinine abnormal and showed any change. He states further that "the solution gave a distinct reaction with litmus paper, a distinct acid reaction". As to this point we are all agreed. In reference to the statement "there was likewise in the microscopic fields starch grains partly altered and distributed unevenly throughout the field" I will say that if such starch grains were present they escaped my notice. Dextrine does sometimes contain unaltered starch grains but they were not present in sufficient numbers in this case to attract my attention, and have no bearing on the points in question. He states "coffee contains cafe-tannic acid, which precipitated out part of the quinine, and I have

no doubt that part of that sediment is due to part of the quinine precipitated out in that form of tannate so that the quinine was subject to reactions in two different directions by this precipitation." In this statement he merelyexpresses a theory but gives no evidence whatever of an experimental nature. Even if the quinine is partly precipitated as tannate, I fail to find any detriment in the change, but on the contrary a distinct advantage as a portion that was in solution would be in an insoluble form. It might here be stated that cocoa as well as coffee is a carrier of tannin, cocoa red, a member of the tannin group, tannin and tannic acid being used synonymously, is present in the cocoa bean to the extent of four to seven per cent., and the precipitation of tannate is quite as probable in the cocoa preparations containing a very considerable amount of cocoa as in this preparation flavored with a small amount of coffee extract.

Q33. Will you please take up Dr. Beringer's answer to Q44 respecting Specimen No. 5 and state your opinion and conclusions on the subjects there discussed?

A. He states "There was decided evidence of precipitation on the sides of the bottle, still showing". I noted no precipitation. He then states "The taste was decidedly bitter and it gave a decided acid reaction with litmus paper and the crystals of quinine sulphate, when examined under the microscope, were distinctly eroded and attacked, and there was likewise separation of quince seed mucilage, showing as I have sketched here the characters of quince mucilage as separated in these specimens (referring to sketch in the witness' hands)". With regard to the alleged bitter taste, No. 5 in my test was quite as bitterless as Coco-Quinine. It was no more acid than Coco-Quinine by the litmus paper test. The crystals of quinine sulphate in my examination were not eroded or attacked, they were normal in appearance.

Q34. Will you please refer to Dr. Beringer's answer to Q59 respecting Bibbins Specimen No. 6. In this answer he stated "under the microscope the crystals of quinine sulphate showed that they were acted upon and eroded and that they separated the Irish moss, jelly and quince seed mucilage in different masses. That this was apparent on the surface of the glass bottle as well as under the microscope. He stated further "In the sketch I have shown (Beringer's sketch) the typical separation of the Irish moss jelly as occurred in this specimen No. 6, and likewise the mucilage of quince-seed, as separated. These separations were unequally distributed throughout the field showing the lack of homogeneous suspension". In connection with this answer as well as his answer respecting Sample No. 5, I ask you to consider his sketch and express your views respecting the same and his conclusions.

A. With reference to the crystals of quinine sulphate I must disagree absolutely with Dr. Beringer. My examination failed to disclose any erosion or any abnormal appearance of the crystals. The preparation is as bitterless as Coco-Quinine. He refers to the separation of the Irish moss jelly and the quince seed mucilage jelly and his illustration of this alleged quince mucilage and Irish moss jelly. The mucilage separated from Irish moss and from quince seed goes into a form of colloidal solution. It is formed by the vegetable cells but on solution in water and straining severs its connection with the organized tissues. If it is precipitated from this colloidal solution, it is a most remarkable phenomena if once again it assumes cellular form. Such a statement is absurd in the highest degree, against all laws of biology or cell formation. The quince seed has an interesting cellular structure corresponding closely to the allied seeds of the apple and pear. There are several distinctive layers which have been carefully studied and to which I have myself

before considering this case or before knowing of this case, studied in detail. There is no structure in the quince seed that corresponds with Dr. Beringer's drawing marked "quince mucilage", and even if there were such a structure I can not comprehend how it would find its way into the quince mucilage in the form of a solution and then be precipitated. The case is somewhat different with Irish moss. This breaks up in the treatment and some of the cells might pass through into the colloidal solution although the cellular matter is removed in making such a solution as completely as possible. If Dr. Beringer found under the microscope any cellular structure such as he marks "quince mucilage" it must have come from the Irish moss although from the picture it might be anything, as it bears the closest resemblance to ciphers arranged in nine rows. His drawing marked "Irish moss jelly" may represent solid particles of the Irish moss which quite posibly found their way in small amount into the preparation. Such being the case it is obviously unfair to make a microscopic picture of the cellular elements, magnified several hundred diameter to illustrate the lack of uniformity of the sample when thousands of such particles equally large or larger can be found under the microscope in Coco-Quinine or Quin-Coco and yet these particles do not interfere in the slightest with the even distribution of the quinine sulphate after reasonable shaking. And in the case of Bibbins sample No. 6 on standing a considerable time, five weeks in fact, without shaking, would also be no detriment and not interfere with the proper dispensing or administering the mixture even without shaking.

Of all the preparations which I have examined, Coco-Quinine and Quin-Coco are the ones that abound in solid particles of cellular matter, whereas in his samples Bibbins employed as thickening or suspending media substances containing little and in some cases no cellular matter. To the naked eye one can see par-

ticles in the cocoa preparations quite as distinctly if not more so than in the Bibbins samples.

Q35. What special experience have you had with or what personal study have you given to the quince seed problem referred to in your answer?

A. In my book on the Microscopy of Food I give a somewhat extensive account of the microscopic structure of the quince seed on page 331 of the second edition.

Q36. In answer to XQ224 Dr. Beringer testifies that in chocolate there is an astringent principle which is classified in tannins. "In my opinion the trace of the tannin like principle present in the commercial cocoas and chocolate is due largely to the admixture of portions of the shells which may be accidentally or otherwise present. In that hull you have a tannic acid principle. It is like a peanut. You take a peanut and in the skin coating there will be tannin, and in the outer shell coating there is some more." What have you to say as to this?

A. Dr. Beringer is correct in his statement that in chocolate there is an astringent principle which is classified with the tannins. In cocoa there is still more than in chocolate, because cocoa is merely chocolate from which a portion of the fat or cocoa butter has been pressed out, thereby increasing the percentage of the other constituents. The statement that in his opinion the trace of the tannin like principle present in the commercial cocoas or chocolates is due largely to the admixture of portions of the shell which may be accidentally or otherwise present is contrary to the well known structure of the cocoa bean, commercial practice and recorded chemical analyses of the products. This statement shows an absolute lack of knowledge of the microscopic structure of the cocoa bean, equal lack of knowledge of the chemical composition of the cocoa bean and cocoa products and a gross injustice to manufacturers of cocoa as well as a possible suggestion of

the grossest neglect on the part of the administrators of the food and drugs act, who would allow cocoa shells to be used in cocoa to such an extent as to give several per cent. of tannin substances. The structure of the cocoa bean is shown on page 445 of the second edition of the Microscopy of Foods, Fig. 348. This figure is a cross section through the shelled cocoa bean or cocoa nib. The cocoa bean is somewhat larger than and about the same size as an ordinary lima bean and is similar to the lima bean (although botanically not at all related), in that it consists in large part of fleshy seed leaves enclosed within a rather thin membraneous skin. Figure 348 referred to is a cross section through one of these seed leaves corresponding to the part of the lima bean which comes up out of the ground in the spring. It shows cells containing starch grains and among these starch three cells of dark color known as the pigment or tannin cells. These three black cells contain tannin or tannic acid, as their chief and characteristic constituent and it is from these cells that the cocoa derives its considerable percentage of tannin. The cocoa shells do not contain tannin in such large amount. They do not find their way into cocoa as the shells are removed in the process of manufacture. So it is obvious that the statement of Dr. Beringer that the tannin of cocoa is due largely to the admixture of portions of the shell is grossly false and misleading. On page 443 of the work cited is the following statement:

> "Over fifty per cent. of the dry embryo consists of fat, the remaining constituents being starch, proteids, theobromine, caffein, a tannin substance known as cooca red, and other substances in small amounts."

Tannin is not an accidental or a minor constituent of the cocoa bean. It is one of the chief constituents and a highly characteristic constituent, both as to its chemical properties, its color and its taste. He states that it

is like a peanut. I can not imagine any common product more unlike a peanut than the cocoa bean in its gross appearance, in its structure, and in many other details. He refers to the tannin in the skin of a peanut and to the tannin in the outer shell coating and in the outer shell, three distinct formations outside of the kernel proper, while I myself after a study covering some weeks never found but two, the red skin and the shell. The statements with regard to the tannin in these three parts of the peanut are not supported by analyses either of his own or of others.

Q37. How extensive has been your study of the cocoa bean and cocoa products?

A. During the years 1902 and 1903 while I was connected with the Connecticut Agricultural Station with the help of two assistants, I made somewhat extensive investigations of the composition of the cocoa bean as secured direct from the importer and ground in the laboratory. This work was the basis for the standards for the composition of cocoa and chocolate promulgated by the United States Department of Agriculture. The methods used or elaborated in this work were for the most part adopted by the Association of Official Agricultural Chemists. In addition somewhat extensive analyses were made of commercial chocolates and cocoas. I submit the report of the station named for 1902 and refer to pages 258 and 259 showing analyses of commercial cocoa. Analyses of the authentic samples to which mention has been made are found on subsequent pages, but in this connection are not of so much interest as those on pages 258 and 259, which are of cocoa such as might be used in the preparation of Coco-Quinine although attention should be called to the fact that in the preparation of this drug product as well as of soda water syrup a cocoa would doubtless be selected containing the minimum amount of fat and correspondingly larger amount of other constituents. In the analyses of cocoa referred to, the range of starch (pure

Indianaoplis, Ind., December 5, 1917, 9 A. M.

Met pursuant to adjournment.

Parties present as before.

Q40. I call your attention to Dr. Beringer's answer to XQs. 212, 213 and 214, and ask you to express your views respecting the subject matter there inquired about and whether or not you agree with Dr. Beringer?

A. The term "peculiar" as used by Dr. Beringer seems to be most unfortunate. Had he said "characteristic" I would agree with him. I find nothing peculiar about cocoa starch, at least more peculiar than of any other starch. The form, size, and other visual characters of the starch grains from different vegetable products differ greatly, so that with the microscope these different starches may be distinguished. In chemical composition the starch in different products agree. We have no evidence that the starch of cocoa is any different from the starch of Indian corn, the potato, the bean, and so on, although different in form. Dr. Beringer states they vary in the character of their coating. I do not understand what he means by "coating," but I will say that I have never heard of a coating of starch grains. It is true that the grains show a concentric structure, as exhibited under the microscope. We note more or less distinct concentric rings, but this structure is not considered to mean a difference in chemical composition other than possibly a variation in the moisture contents. On treatment with reagents starch grains show certain peculiarities, but these are not to my knowledge of the nature of coatings.

He states that it is a mooted question whether the different starches have the same chemical composition, but adds that it is commonly considered that they are chemically of the same composition. While modern research shows that perhaps the true formula for starch is some multiple of the figures given in the common formula $C_6H_{10}O_5$. I know of no evidence whatever that this differs in the starch from different sources.

To sum up, starch is considered to have the same chemical composition regardless of its source; but the granules differ in form in different plants.

Q41. I call your attention to Dr. Beringer's answer to XQ122, respecting suspending mediums and call your attention to what he said about chocolate as a suspending medium, and ask your opinion of this same subject matter?

A. Basing my answer on my own examination of the Bibbins samples, Coco-Quinine and Quin-Coco, I will say that cocoa, which I assume is what Dr. Beringer means by chocolate, is not as good a suspending medium as gelatin, Irish moss, dextrine. It is true that chocolate, or rather cocoa, on boiling with water gelatinizes to a certain extent, and therefore becomes more or less of a colloidal nature, but this is attributable to the starch of the cocoa, and such being the case there is no reason to conclude that cocoa serves the purpose in a way that nothing else so far suggested does. As a matter of fact, cocoa owes its suspending power after boiling with water to starch. This I have shown to be true by a very simple experiment. I mixed a teaspoonful of cocoa with a half of cup of cold water, transferred the mixture to a bottle. I then mixed another teaspoonful of cocoa with half a cup of water and brought the mixture to a boil with constant stirring, boiled for a few minutes, then transferred to a bottle as in the case of the unboiled mixture. The boiling was not continued long enough to decrease the volume through evaporation. Both the boiled and the unboiled prep-

arations were thoroughly shaken and allowed to stand undisturbed. After a time the cocoa in the unboiled preparation settled out, forming a distinct layer, that is, the insoluble portions of the cocoa; small quantities may have gone into solution. From the boiled preparation the cocoa also settled out after a time, but in a much more bulky condition. It occupied several times the bulk, as in the unboiled preparation. The boiling performed one function, namely, the gelatinization of the starch, that is, the conversion of this constituent into the pasty condition with the water. And this change accounts for the change noted.

I know of no other constituent of cocoa than starch which gives this condition—that goes into colloidal solution and thereby imparts to the preparation suspending power. In my opinion starch by itself used in the same quantity present in the cocoa is superior as a suspending agent to cocoa containing that amount of starch. In the cocoa the starch after its gelatinization, in the case of quinine preparations, not only has the task of suspending the quinine crystals, but it must also suspend the solid insoluble portion of the cocoa itself. In other words, while the cocoa contains a suspending gelatinizing material it also contains materials that must themselves be suspended.

Q42. I ask you to refer to Dr. Beringer's answers to XQs. 134, 135 and 136 and 137, and express your opinion on the subjects there inquired about very briefly. You have already covered the subject matter very thoroughly, and I only ask now for brief comments directed to these particular answers?

A. It appears to me that Dr. Beringer uses a great many words to describe a very simple phenomenon, but that he evades the true explanation of the suspending power of cocoa. He states in answer to the question, "How does chocolate suspend quinine," that this is "by virtue of the constituents of chocolate", that "it has the property of making a mixture that will hold

up, distributed throughout it, or in suspending the quinine sulphate". I can not understand why he did not state that this is due to the starch in the cocoa. He evades a simple explanation.

Q43. Dr. Beringer stated in answer to XQ159 respecting Bibbins Sample No. 2, that it was decidedly more bitter than Coco-Quinine. What have you to say as to this?

A. I did not find it so. I found it delicious, quite as bitterless as Coco-Quinine.

Q44. In answer to XQ174, Dr. Beringer stated that he could distinguish the mucilage of quince seed from the mucilage of Irish moss under the microscope. In XQ175 he was asked in what way. He replied: "Irish moss is larger and more gelatinous and gluey in character." What have you to say as to this?

A. I will say that I am unable in a gelatinized form to distinguish these products. I do not believe it can be done, although it is well known that the Irish moss itself has microscopic appearances quite distinct from those of the quince seed. I refer to the cellular elements which do not go into colloidal solution. The quince seed tissues I was unable to find in any of these preparations.

Q45. Do you believe it is possible to distinguish under the microscope quince seed mucilage, tragacanth, Irish moss jelly tolu and gelatin, as found in these Bibbins samples and identify each?

A. I do not believe it is possible. I would not attempt it.

Q46. I ask your attention to the answer of Dr. Beringer to Qs. 86 and 87 and XQ206, respecting the colorings used, with special reference to what he says about coal tar dyes, and ask for your opinion of his testimony and your own opinion respecting the subject matter inquired about?

A. With regard to his statement that the coal tar dyes are susceptible to occasional precipitation and

that he suspects that some of the specimens which show precipitation owe this in a measure to the artificial coloring, I will say that the amount of coloring used was so minute that if precipitated it could not be detected by ordinary means in a colloidal solution, such as exists in the Bibbins samples. Even if precipitated I fail to see any disadvantage, as the whole purpose of the coloring is to please the eye, and the eye shows in all of these samples an even distribution of color.

As regards the therapeutic action of dyes his reference to Allen seems to me grossly unfair and misleading. Allen does state, and every food chemist knows, that napthol yellow is a poisonous dye. Napthol yellow S, however, is recognized as a harmless color and its use is sanctioned by the United States Government, it being one of the eight colors allowed by regulation of the United States Department of Agriculture. To insinuate that napthol yellow S, which was used in at least one of the Bibbins samples, may be harmful because napthol yellow is known to be harmful, is unfair as to insinuate that common salt is injurious to health because muriatic acid and caustic soda, which, together in the proper amount, form common salt, are highly corrosive substances.

I might cite numerous cases where napthol yellow has been shown to be a poison. While I was in charge of the Chicago laboratory in the enforcement of the Foods and Drugs Act, we seized and finally by condemnation of the Court destroyed several carloads of macaroni colored with napthol yellow, yet at that time the Government was sanctioning the use of napthol yellow S as a coloring, under suitable regulations to avoid deception.

If coloring matter is to be allowed in foods and drugs I believe that carefully selected coal tar colors inocuous in themselves and free from poisoning contamination, are more likely to be unobjectionable from a sanitary standpoint than so-called natural colors, such

as cudbear, prepared from sea mosses, and cochineal, a disgusting bug, which come from regions where sanitary precautions are not taken, and where they are handled by natives under filthy conditions.

Q47. In XQ187 Dr. Beringer was asked how he determined the unevenness in the different fields by his microscopic examination. He answered: "Under the same magnification we would have naturally the same number of quinine crystals." He was then asked if he counted the quinine crystals in the respective fields, and he answered that he did in some of them. What have you to say as to this?

A. I will say that the mere counting of quinine crystals in a field is of little or no use, for the reason that the crystals vary greatly in size. Some of them being ten, twenty, and perhaps a hundred times larger than others. If an experienced microscopist expressed his judgment on the matter I would consider the results of some value, although the microscope in the case of a solid material, such as quinine crystals, where the individuals vary greatly, cannot be used in a strictly quantitative way. In such preparations as blood, where the size of the corpuscles is quite uniform, counting is a valuable quantitative test.

Q48. In your experience as a chemist have you ever understood that it was a well known fact that mixtures of oil become rancid much more quickly than pure oils themselves?

A. I have never noted the fact, nor had I ever heard of it until I came into this case.

Q49. I ask you to refer to Dr. Beringer's answer to Q85, the last paragraph of his answer, and note what he says respecting benzaldehyde as a flavoring, and comment thereon and express your opinion of the subject inquired about?

A. Benzaldehyde is a very popular flavor. It is the flavor of the so-called maraschino cherries. It is the chief flavor constituent of bitter almond oil, highly prized for culinary use in this country and especially

in England. I have never heard that it is objectionable because it loses its flavor by reduction to benzoic acid. Dr. Beringer states that it is apt to be oxidized, being reduced to benzoic acid. Oxidization and reduction are diametrically opposite chemical processes. Even if a portion of the benzaldehyde were oxidized to benzoic acid, such benzoic acid would be no detriment in preparations such as we are considering, as it would act as a preservative.

Q50. In answer to XQ191 Dr. Beringer stated that in a number of examinations that he had made he found quinine sulphate equally and thoroughly distributed. In answer to XQ201, wherein he was asked whether after a bottle of Coco-Quinine had been standing a long time would there be any difference in the quinine contents at the top and the bottom, he answered: "I have not made such a determination." What do you understand by his answers to these respective questions?

A. These two answers are not in harmony. It would be impossible to show a uniform distribution of the crystals without a microscopic examination of the top and the bottom of the bottle. Dr. Beringer says in answer to XQ191, that there appears to be a uniform distribution, but in answer to XQ201 he states that he made no determination after standing for a long time. It may be that in answer to XQ191 he had in mind an even distribution immediately after shaking, but judging from his previous testimony it has been my understanding that he insisted that a suspending medium to be satisfactory must hold up the crystals for a long time.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ51. I think you said that the litmus determination of acidity was not quantitative. Is that correct?

A. Using litmus paper as a test of acidity is not quantitative.

XQ52. Is that absolutely true in your opinion, or only to a modified extent?

A. It is true that a very faint degree of acidity with blue litmus paper would not become as red as when a medium or large amount was present, but beyond that small degree of acidity you get no indication from the litmus paper as to the amount present. You could not tell, for example, whether there was 1 per cent. or 30 per cent. of acid present by the degree of color.

XQ53. When saying that the litmus determination of acidity is not quantitative, I take it that you mean that it furnishes no method by which an accurate determination or a scientific determination of the acidity present can be made?

A. It is not even approximate. To explain, vinegar makers have rough, or approximate, methods of determining the acidity of their products, which methods are quantitative, although not accurate to such a high degree as the methods used in the chemical laboratory, but no vinegar maker would think of using litmus paper to determine the strength of his vinegar. With it he could not tell whether his vinegar contained half a per cent., 5 per cent. or 10 per cent. of acid. I refer, of course, to dipping the litmus paper into the product and not to using the litmus paper in conjunction with other reagents. Used in such latter way litmus paper may become a part of a strictly accurate determination.

XQ54. Suppose you took up the ten Bibbins exhibits the first time, ignorant of their contents, and tested them by simply placing litmus paper in each bottle, do you mean to say that you would get absolutely no information from such action as to comparative acidity of the material in the ten bottles?

A. I mean to say that I did test all ten bottles with litmus paper, and the only information I got was that the products were distinctly acid, and I got this

same information when I dipped the litmus paper into the cocoa preparations of the two manufacturers; that no difference in acidity could be detected between the Bibbins samples and the cocoa preparations by this test. I made the tests independent of any knowledge of the constituents.

XQ55. I understand that you made no quantitative test of acidity of the Bibbins samples other than the litmus test so far as that threw any light on the subject?

A. I made no quantitative tests for acidity. I made the litmus test, which is not quantitative.

XQ56. Is there any sense in which you call yourself a pharmacist?

A. No, sir.

XQ57. Has your professional work been more along the line of foods or drugs?

A. More along the line of foods.

XQ58. And very much more?

A. Very much more.

XQ59. This question of human tasting and of detecting by the gustatory organs of the mouth the presence of some particular article by its taste—does not this human sense of taste differ enormously in different people, just as sight or hearing do?

A. It differs somewhat.

XQ60. Would you not use a stronger word than "somewhat"?

A. I am not qualifying as a medical man, but in my understanding the sense of taste does not differ so much as the sense of sight or hearing. I know of people who are stone blind and absolutely deaf, but I do not happen to know of any one who cannot taste.

XQ61. Is tasting at all a matter of training in any given individual. I mean the accurate sense of taste?

A. It is well known that wine tasters and tea tasters develop their faculty of taste in a high degree. So far as I know.

XQ62. Then your answer to my question is yes, and what you actually answered was explanatory. Is that correct?

A. I would hardly like to answer the question yes, for fear that I might not understand your meaning. I explained what my understanding was of cultivated sense of taste. I wish to add that these trained tasters are distinguishing between products of different degrees of excellence, not between products that are absolutely nauseating, bitter, and products which are delicious.

XQ63. Would you say that your professional life and daily work constantly called for the exercise for the sense of taste in a practical way from various chemical or other substances?

A. The chemist is taught early in life to be a taster. The sense of taste and smell are continually used in the chemical laboratory and especially in food examinations. I will state, however, in this case, one does not need to become skilled as a taster any more than one needs to become skilled in detecting the difference between good tasting food and poor tasting food.

XQ64. But you have assumed in this case to pass upon the degree of bitterness in the various compounds you have handled here? That is, in a more or less quantitative way. How far does that not imply an assumption on your part that your palate is a more or less trained palate to detect differences in bitterness, for instance?

A. I did not assume that my palate was especially trained. The patient who would take these preparations as drugs would not have specially trained palates, and I expressed my judgment, putting myself in the position of the patient.

XQ65. That is you became the sick child in place of the expert chemist. Is that correct?

A. I did not put myself in the position of the child,

but of an intelligent person who has a palate who can tell the difference between what is good and what is distasteful.

XQ66. Do you know personally, where is the seat of your strongest sense of taste?

A. I am not a physiologist, and I have never thought of that point. Products taste, for example, bitter or not bitter to me, and I do not attempt to locate the nerves.

XQ67. But is it on the tip of your tongue?

A. That I could not say.

XQ68. If you were now asked to taste one of these Bibbin samples in order to testify as to what you tasted in it, would you take a drop or a spoonful, or what portion?

A. I would take different quantities, and repeat the test several times, taking care that the bitter taste of one sample held over did not mislead my judgment in regard to another sample.

XQ69. Will you not answer my last question a little more closely than you have.

A. I would take several days for the test. I could not do it all at one sitting, because after tasting one bitter sample my sense of taste would be ruined for testing those that were not bitter. I would say that a teaspoonful appears to me to be a large quantity to use. I believe a somewhat smaller amount would answer, because in my experience in tasting the cocoa preparations I found I could form as good a judgment from say a quarter of a teaspoonful as a whole teaspoonful.

XQ70. Have you any knowledge as to what the popular flavoring substances are in drug business and in the candy business?

A. I have the knowledge that several flavors are very popular in the candy business, and I also have some knowledge as to the flavors which are used in drugs.

XQ71. Would you be testifying, professionally I

mean, on the latter subject if I examined you or would you only speak from such general knowledge that a great many people have unprofessionally?

A. I would not be testifying from the standpoint of a physician or a pharmacist or pharmaceutical manufacturer.

XQ72. Referring to your answer to Q36 on the subject of the presence in commercial cocoa of particles of shell and the consequent presence of such particles in the preparations before us or some of them, is it not a fact that Dr. Beringer has testified that the amount if any of such shells in any one of these preparations is extremely minute?

A. I can only refer you to the official record.

XQ73. Would you venture to say as your opinion that commercial cocoas or chocolates contain or usually contain no portions of the shell of the article?

A. They might contain minute portions, but any considerable portion which would, of course, constitute an adulteration is rarely or if ever present at the present time in commercial cocoa.

XQ74. Is every bag of cocoa tested by the Government?

A. No, sir.

XQ75. How could its presence in minute or even small quantities of the shell be likely to be found out except by the user?

A. The user would not be able to find it out, anything like as readily as the trained Government examiner and expert, who has at his command chemical and microscopical methods.

XQ76. But don't you see that you have just said that the Government does not interest itself in every bag of cocoa?

A. Certainly not, but the Government does exercise a rigid inspection of the product, the Government inspectors having access to the factories at all times and Government chemists and microscopists being con-

tinually engaged in the examination of samples taken here and there in the market. Of course, no system of inspection of any kind is an absolute safeguard against fraud, but I fail to see how even if fraud were practiced by the addition of shells to the cocoa furnished to either of the houses in this litigation would alter my general contention that the seat of the tannin in cocoa is the cocoa nib, the part of the cocoa bean legitimately used in the manufacture of cocoa, and not in the shell, which might in minute quantities accidentally be introduced into the product, although the shell might contain a small percentage of tannin.

XQ77. Then you severely criticise Dr. Beringer for holding to the opinion that some commercial cocoa may have in it some particles of shell of the cocoa bean?

A. I criticize him for attributing to a highly improbable form of contamination the presence of a substance, to wit, tannin, which is normally present as one of the important constituents of the pure unadulterated product.

XQ78. You have stated that some of the crystals of quinine sulphate in one or more of the ten Bibbins samples appeared in the microscope to have changed to an oily compound, or to have gone into an oily condition. How did you ascertain that this condition was "oily"?

A. When I said "oily" I meant deported itself like an oil, being in a liquid condition insoluble in the menstrum. I do not wish to say that it has the composition of any kind of an oil.

XQ79. And you made no attempt to identify the substance?

A. That would be a long and difficult undertaking, but I will say that the observations I made were such as might lead an organic chemist into an exceedingly interesting field.

XQ80. Did you observe any such change in the quinine sulphate crystals in Coco-Quinine or Quin-Coco?

A. I did not.

XQ81. Would you consider a product in which such changes had taken place to be a suitable product for commercial use in the drug business? Without further investigation at least?

A. I think that is a pharmaceutical question.

XQ82. But you would at least admit that seeing such changes, that something had gone wrong with the preparation, would you not?

A. That, coupled with the bitter taste.

XQ83. Did you form an estimate in your mind of the number of crystals in the several layers which you found in the Bibbins specimens when examined under the microscope?

A. I formed no quantitative estimate. I did reach the conclusion that the appearance at the top and the bottom of the bottle was not disinguishable, I mean in respect of crystals, except in one instance, where I noted that the crystals were small at the top. I did, however, in the Coco-Quinine and Quin-Coco specimens on standing find a marked distinction in the number or rather quantity of the crystals at the top and at the bottom of the bottle. Mere numbers of crystals does not tell the story. It is merely a judgment based on all the characters involved as to the quantity suspended in the top or in the bottom of the bottle.

Re-direct-examination.

By Mr. Bradford:

RDQ84. In one of your answers to a cross-question you stated that litmus paper might be used as a part of a method to determine accurately quantitative acidity in a preparation. Was such a method employed by Dr. Beringer as explained by him in answer to Q8 of his deposition?

A. It was not.

RDQ85. You have stated that your work has been more largely with foods than with drugs. Do or do not

many of the same constituents enter into the manufacture of foods and drugs?

A. The two subjects overlap. For example, in the products in question, cocoa, sugar, the different flavoring constituents, such as ginger, peppermint, sassafras, wintergreen, orange and benzaldehyde, are well known food constituents.

RDQ86. And your testimony in this case has been with subjects that you are entirely familiar with and in a number of instances have made the subject of a number of experiments and investigations?

A. That is true.

Deposition closed.

ANDREW L. WINTON.

FRANCIS E. BIBBINS, being recalled as a witness for plaintiff, in answer to interrogatories propounded to him by counsel, testifies as follows:

By MR. BRADFORD:

Q1. Dr. Winton in his testimony has referred to certain bottles of syrups which he testified he received from you. Among others, a bottle partially filled with Quin-Coco, marked No. 8. I ask if you recognize this bottle and can identify it, and if so, where you obtained it and what condition it was in when you obtained it and the circumstances under which you gave it to Dr. Winton, if you gave it to him?

A. This sample No. 8 was received by me in an unbroken package through the receiving department of Eli Lilly & Co. It was delivered to me with the parchment wrapping intact, and opened by me, and after a portion of its contents being used by me in my experimental work in this case, the balance of the sample in this bottle was turned over to Dr. Winton.

Q2. I also show you ten three-ounce bottles, said to contain specimens of the Bibbins syrups, Nos. 1 to

10, respectively, and testified by Dr. Winton to have been received by him from you. Will you please state what these bottles contain and the circumstances under which they were delivered to Dr. Winton by you, if such is the fact?

A. These samples were taken from the balance of the experimental lot from which the samples offered in this case as exhibits by me were taken. I refer to Plaintiff's Exhibits, Sample Syrups No. 1 to 10, respectively. The syrups were transferred to the bottles and labelled No. 1 to No. 10, the same as the exhibits respectively referred to, and were handed by me to Dr. Winton.

Q3. Do these bottles contain a portion of the identical batch of material, as contained in the exhibit syrups No. 1 to No. 10, respectively, and have these portions of said batches been in your possession continuously from the time they were made until they were turned over to Dr. Winton?

A. Yes, sir.

Q4. In answer to Q74, Dr. Beringer testified respecting sample No. 10, stated that it appeared to have been colored, but that the coloring matter is not stated. Was any coloring matter used in this sample?

A. No.

Cross-examination.

By Mr. Rawle:

XQ5. Do you state that the integrity of the manufacturer of the Bibbins samples, their preservation after the sample bottles put in evidence had been taken from them and until the Winton bottles were filled, has all been in your own personal professional care and under your personal professional observation?

A. Yes.

Re-direct-examination.

By Mr. Bradford:

RDQ6. I neglected to ask you if the same facts are true, and applied respecting the ten specimens of

these sample syrups numbered 1 to 10, used and introduced into evidence by Dr. Caspari?

A. They are. I personally filled the Caspari sample bottles from the same original batches and personally handed them to Dr. Caspari.

Deposition closed.

FRANCIS E. BIBBONS.

SAMUEL L. HILTON, a witness called by and on behalf of the plaintiff, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

By MR. BRADFORD:

Q1. Please state your name, age, residence and occupation?

A. Samuel L. Hilton; age, nearly 52; Washington, D. C.; pharmacist.

Q2. Please state the character and extent of your experience, education and work by which you are qualified to testify as an expert in cases requiring knowledge of chemical and pharmaceutical subjects?

A. I am a graduate of pharmacy, having a degree of doctor of pharmacy, having been engaged actively and continuously in the practice of pharmacy for thirty-four years. I was assistant to the chair of analytical chemistry at the National College of Pharmacy, Washington, D. C., for five years. On many occasions I have delivered many lectures on special pharmaceutical subjects to the classes. For eight years I was a member of the Board of Pharmacy of the District of Columbia, its secretary, and having in charge all examinations on theoretical and practical pharmacy.

Q3. Please state what scientific or other societies you are a member of, and any official or committee connections you have with such societies or have had with such societies?

A. I was a delegate to the United States Pharmacopoeia Convention of 1900 and 1910, was elected treasurer of the U. S. Pharmacopoeia Convention in 1910, and still hold that position. While not a member of the United States Pharmacopoeia Revision Committee, I have been active in revision work, and received special notice for my activities in the lists of those who were active, published in the Pharmacopœia. I am a life member of the American Pharmaceutical Association, twice have been a member of its council, and at present vice-chairman of the council. I have likewise been a member of numerous committees of the American Pharmaceutical Association. I am also a member of the revision committee having charge of the revision of the National Formulary. Member of the American Chemical Society.

Q4. You see before you on the table a number of bottles containing preparations, one being a bottle of plaintiff's preparation, Coco-Quinine, another a bottle of defendant's preparation, Quin-Coco, and ten other bottles containing Bibbins Exhibits Syrups Number 1 to 10, also Plaintiff's Exhibit, Bottle No. 1, shown by the evidence to contain Coco-Quinine with cocoa omitted; another, complainant's exhibit, Bottle No. 2, shown by the evidence to contain Coco-Quinine, with yerba santa omitted. I ask you if you have seen these various exhibit bottles before, and if so, when and where?

MR. RAWLE: Same objections as have been noted of record to all of the preceding witnesses, and upon the same ground of irregularity and admissibility and notice of motion to strike out with costs.

MR. BRADFORD: Same agreement to apply.

A. I have, at Mr. Bradford's office in Indianapolis, Indiana, Sunday evening, December 2, 1917.

Q5. Did you examine the preparations contained

in these several bottles, and if you did, will you please explain the character and extent of your examination?

A. I examined them on that occasion as carefully as could be done under the circumstances, and noting their physical characteristics, their odor and taste.

Q6. Are you familiar with the preparation Coco-Quinine, and if so, when did you first become familiar with it and what is the extent of your knowledge of it as a medicine?

A. I am familiar with Coco-Quinine, and if my memory serves me correctly, became familiar first with it about fourteen or fifteen years ago. I have continuously handled the product in my business, dispensing same on physician's prescriptions and to the laity when called for over the counter. It has been perfectly satisfactory as a medicine, and I can testify that it has been what is known among pharmaceutical preparations as a good repeater, persons once using it will repeatedly call for the same preparation when they need such a preparation.

Q7. Are you familiar with Quin-Coco, and if you are, to what extent?

A. With reference to Quin-Coco I know there is such a preparation on the market. The salesman of the house that makes it offered it to me four or five years ago as a substitute for Coco-Quinine. His offer being rejected on the grounds that it was unfair competition, and when Coco-Quinine was called for it meant a preparation manufactured by Eli Lilly & Co.

MR. RAWLE: The last two questions and the answers are objected to for the additional reasons as irregular at this time and therefore inadmissible, and as irrelevant. The answer to the last question is objected to as volunteered, as stating inferences and not facts. The original objections are repeated.

Q8. Dr. George M. Beringer, when called as a wit-

ness for defendant, testifying in sur-rebuttal at Philadelphia on June 8, 1917, stated that he had examined specimens of these Bibbins samples, being a part of the contents removed from these identical bottles when they were introduced in evidence at the time Mr. Bibbins' deposition was taken, poured therefrom by Mr. Pfeiffer and Mr. Rawle into smaller bottles, and he took up each specimen separately and condemned each and all as pharmaceutically objectionable, unfit and unmarketable and unstable. Assuming that these preparations were made in March, 1916, and have been in the laboratory of Mr. Bibbin from that time until the date of his deposition and in my office in Indianapolis from that day untl Sunday night, when they were brought to this room, I will ask you to express your opinion respecting these qualities of the respective syrups, first will you please take up Sample No. 2, then No. 4, then No. 5 and then No. 6, and state your opinion as a pharmacist of these preparations and whether or not you would consider them stable, satisfactory and marketable?

A. With reference to preparation No. 2, as to stability there is no question in my judgment of its being perfectly stable. As to being a good pharmaceutical preparation I would class it as an elegant pharmaceutical preparation.

As to its marketability I see no reason why it should not be, if the proper endeavors were put back of the preparation to introduce it and bring it to the attention of physicians. It is a far better appearing preparation in every way than many pharmaceutical preparations now on the market enjoying extensive sales. As to the taste I will state that I have tasted this before the examination and am willing to do so again. The taste is perfectly pleasant and showing but a very slight bitter taste, and then only after being in constant contact with the tongue quite a little time.

With reference to Sample No. 4, the same testi-

mony that I have given with reference to Sample No. 2 holds with reference to Sample No. 4. With reference to taste it is very pleasant and showing but a slight bitter taste, and then only after some little while in constant contact with the tongue.

The same testimony that I have given in reference to Sample No. 4 is equally true as to No. 5. While there is a slight sign of separation at the top of the liquid that is entirely immaterial in my judgment and does not affect the marketability of the preparation. With reference to taste, what I have testified with respect to No. 2 and No. 4 is equally true as to Sample No. 5, the bitter taste is but very slight.

Sample No. 6, while this sample shows a little different condition on the upper portion of the bottle, as a pharmaceutical preparation that is immaterial in my judgment and does not affect the marketability of the preparation whatever. Other than that what I have testified to with reference to the previous samples holds true for Sample No. 6. With reference to taste, it is perfectly palatable and shows but very slight bitter taste only after being in contact with the tongue for some little time.

Collecively, I consider all four samples elegant, marketable preparations, that would enjoy a large sale if they were properly exploited.

Q9. In his testimony Dr. Beringer condemned each and all of these preparations without qualification, pointing out many defects in each, and compared them with Coco-Quinine, and stating particularly as to Sample No. 2, that it was decidedly more bitter than Coco-Quinine. I will ask you if what you said about bitterness of these samples is likewise true of Coco-Quinine, and what you have to say about Dr. Beringer's testimony thus referred to?

A. I cannot agree in any way with Mr. Beringer. None of the four samples, in my judgment, develop any more bitterness than Coco-Quinine. In general

appearance the samples, 2, 4, 5 and 6, I believe, show up as better pharmaceutical preparations than Coco-Quinine.

Q10. Will you please consider Samples Nos. 1 and 9 and answer in the same way what you find in reference to these preparations?

A. Sample No. 1 in my judgment is but slightly inferior as a pharmaceutical preparation in appearance when compared with Sample No. 2. As to flavor it is rather pleasant, and it would be no doubt acceptable to a majority of users. As to taste, it is not quite as pleasant as Samples Nos. 2, 4, 5 and 6, in my judgment. You get the slightly bitter taste much quicker than with Samples Nos. 2, 4, 5 or 6.

With reference to Sample No. 9, as to appearance I cannot see the slightest objection as a pharmaceutical preparation of the character of these preparations holding medicaments in suspension. The flavor is decidedly pleasant, and no doubt would be acceptable by many. As to taste, it is more bitter than samples Nos. 2, 4, 5 and 6, you getting the bitter taste in a much shorter period of time.

I would consider both samples No. 1 and No. 9 as marketable preparations, and would no doubt enjoy a large sale if properly exploited, there being many preparations on the market at the present time inferior in character in every way enjoying such sales.

Q11. Without asking you to examine into detail Samples Nos. 3, 7, 8 and 10, which all the witnesses have agreed have developed some degree of bitterness, perhaps exceeding that of the other samples, I will ask you to state as a pharmacist whether you believe that such defect might be overcome by further laboratory experimentation, and whether or not even in their present form or as thus improved they might become marketable preparations?

Mr. Rawle: Specially objected to, because the witness cannot possibly be expected to know or

testify what further experimentation would make these preparations good or what work had been put on them or anything about the formula.

A. I agree that they could probably, with some experimentation, be improved, and I consider that they are all marketable preparations in their present condition, far better than many preparations that are sold by the retail pharmacists to-day.

Q12. What does a "Shake Well" label on a bottle of medicine signify to a druggist?

A. It is a specific direction that the product contains a medicament that is held only in suspension, and for the purpose of securing even distribution the bottle is directed to be well shaken. The pharmacist likewise directs the purchaser of that fact on dispensing a physician's prescription containing substances held in suspension, or when selling direct to the purchaser so that each dose will be practically uniform.

Q13. In Dr. Beringer's testimony he states that a perfect suspending medium for a preparation of this character must have perfect homogeneity and maintain the medicament in even distribution, even after standing for a long period of time. What have you to say as to this?

A. I do not agree with Mr. Beringer. While it is desirable to have a minimum of separation it is practically unobtainable, even on short standing.

Q14. I show you this bottle, Complainant's Exhibit, Bottle No. 1, containing all of the constituents of Coco-Quinine, except cocoa, and ask you if you have tasted the same, and to express your opinion respecting its characteristics, and whether or not it would in itself be a marketable preparation?

A. While the preparation on standing showed some separation, it is on shaking homogeneous and in better condition than very many preparations as to appearance now on the market. As to odor, decidedly pleasant. As to taste, no more bitter than Coco-Quinine or

Samples 2, 4, 5 and 6. As to marketability I can see no reason whatever why it is not as marketable as the other samples about which I have testified.

Q15. Will you also examine and taste Complainant's Exhibit, Bottle No. 2, which contains all of the ingredients of Coco-Quinine, with the exception of the yerba santa, and state what you find as to its taste, etc.?

A. As to appearance, I will say and repeat what I said with reference to No. 1, last referred to. The odor is rather pleasant, but not as pleasant as some of the other specimens. As to taste, the bitterness develops instantly.

Q16. You stated that you were a member of the Committee on Revision of the National Formulary. I believe Dr. Beringer also is a member of that committee, and in his testimony he told us of experiments he had made in an endeavor to make a formula for a chocolate quinine preparation for that book, and expressed the opinion that from an ethical standpoint he was entirely justified in so doing, even with Coco-Quinine as the preparation to work from. What have you to say as to this?

A. Mr. Beringer reported at a session of the National Formulary committee on a preparation of that character that he had been working on a formula for the preparation, that he had failed to make a satisfactory preparation, asking for time to continue his experiments. Several of us, myself included, objected to the inclusion of any such formula, and stated our objections vigorously, that the National Formulary was not to be a receptacle for substitute preparations. As far as I know, no further work was done on the preparation, and the National Formulary IV shows no such formula included.

Q17. What have you to say as to the merits or demerits of benzaldehyde as a flavor for medicinal preparations?

A. I know of no objection based on a sound prin-

ciple against the use of benzaldehyde, and can further say that in the District of Columbia there are several preparations, one of which has been used in rather a large way for many years, both on physician's prescriptions and by direct sale to the public, in which the predominant flavor is benzaldehyde. I further manufacture a preparation myself for physicians' use, and also for a tuberculosis dispensary, where the predominant flavor is benzaldehyde, and have been using it and furnishing same for about six years. Benzaldehyde is also used in certain food products as a flavor, and is a very acceptable flavor.

Q18. What medicinal preparation did you first become acquainted with in which cocoa or chocolate was used as the coloring and flavoring agent?

A. Coco-Quinine.

Q19. How extensively has the use of cocoa gone into use as a coloring and flavoring agent for liquid medicine?

A. I know of none other than the Lilly line that enjoy any sale or reputation in the District of Columbia worth speaking of.

Q20. Is, or is not, the use of coal tar products in medicines objectionable?

A. My opinion is that they are not objectionable, not as much so as many of the animal and vegetable colorings that have been used for some time, for the reason that the accepted colors as specified by the Bureau of Chemistry of the Department of Agriculture are classed as harmless and rightly so in food products, and that they are prepared in laboratories with the greatest amount of care under excellent sanitary conditions, so that you obtain a pure product free from contamination, while with animal and vegetable coloring matters they are prepared in countries foreign to our own by usually the ignorant natives, mostly under the most unsanitary and unfavorable conditions, making it impossible to obtain a pure product that is not contaminated with filthy, nasty foreign material.

Direct-examination closed.

Cross-examination, without waiver of objections.

By Mr. Rawle:

XQ21. When you say that Coco-Quinine is a "good repeater," do you mean that it is well thought of by your customers or your prescribing doctors, and that they are very apt to order it again and again, or call for it again and again over the counter? Is that about what you mean by a "repeater"?

A. Yes.

XQ22. And from the standpoint of the drug salesman who calls on you I suppose a "good repeater" would be a drug or preparation which the salesman had sold to the druggist before and the druggist liked it, and that it was pretty easy for the salesman to sell him some more on the next trip if the drug was out?

A. I don't see that the drug salesman has anything to do with it; it is what the physicians and what the public want.

XQ23. Is the expression, a "good repeater," a familiar one among the druggists, or with you?

A. It is quite a familiar one among the druggists with reference to preparations for which there is a good sale.

XQ24. That is a steady demand?

A. Yes.

XQ25. And may not the expression have gotten into the mouths of the drug salesmen, so that they have been talking or do talk sometimes of a preparation being a "good repeater," meaning that there is a steady demand for it among their customers?

A. Not being a salesman I am unable to state what their view is.

XQ26. In tasting the Bibbins Samples 2, 4, 5 and 6, this morning, you inverted the bottle, leaving some of the contents on the bottom of the cork, removed a little of the contents on your finger and placed it on your tongue, in each case. Is that correct?

A. It is, and I consider I got an average sample for the test.

XQ27. Then, as I timed you, you would wait for about twenty seconds and then begin to answer the question put to you by counsel?

A. That is correct, and the answer was not forthcoming until the moment I began to obtain the slightest bitter taste, which I consider, without timing, to be at least thirty seconds in each case, instead of twenty seconds, possibly longer.

XQ28. And this elapsed period of at least thirty seconds is what you referred to in answer to one of the questions when you said that Sample No. 4 showed "but a slight bitter taste, and then only after some little while in constant contact with the tongue"? Is that correct?

A. That is.

XQ29. And in tasting those first four samples you did nothing in tasting the samples to remove from your organs of taste whatever might have remained thereon from the tasting of the preceding sample. Is that correct?

A. That is not correct, as I rinsed my mouth with water on each occasion in the presence of counsel.

XQ30. Then, to be perfectly fair to you, I understand that you did rinse your mouth after each sample before you tasted the next?

A. That is correct.

XQ31. I understand that your phrase "elegant pharmaceutical preparation," in answer to Q8, is a common phrase to indicate a good appearing preparation, and such a one as you as a leading druggist in Washington are willing to carry on your shelves. Is that correct? I would like you to assume that the preparation has merit of its own, in your belief.

A. I used the term in a different sense, and in this way to distinguish from the ordinary extemporaneous preparation, as, for instance, a physician's prescription, from one that is the result of careful research and experiment, that has not only qualities of merit, but is of itself elegant in every sense of the word.

XQ32. In testifying that this Bibbins article No. 2 was "an elegant pharmaceutical preparation," what qualities in the Bibbins bottle No. 2 before you did you consider as the basis of such an opinion?

A. I think my answer sufficient, and covered the main points of my observation.

XQ33. How can you, sitting there, pick up one of the bottles before you and properly give any opinion as to the "stability" of the preparation in that bottle?

A. I testified at the start that I had examined those preparations Sunday evening, December 2nd, 1917; that it was admitted that these samples were over one year old at the time they were presented to me, and that I think that is sufficient to show that they had not undergone any change when the contents of each package clearly shows that they are free from fermentation, and that they are homogeneous mixtures and that they are practically tasteless.

XQ34. How can you properly testify to the homogeneity of the contents of Bibbins No. 2, except so far as to say that it looks homogeneous at the present moment?

A. The only means at my command at the time of giving the testimony to more minutely define that question was not available, and I was therefore compelled to rely upon the physical appearance, as presented to the eye.

XQ35. Bibbins Samples 3, 7, 8 and 10 were not tasted by you while testifying. Is that correct?

A. The record should show that. I do not remember those numbers at this time. I admit that there were some I did not taste.

XQ36. Have you at this sitting today tasted Coco-Quinine or Quin-Coco?

A. I have not.

XQ37. Then, of course, you have not compared the degree of bitterness of the Bibbins samples you have tasted with any degree of bitterness in Coco-Quinine and Quin-Coco, have you?

A. With Coco-Quinine I have made no comparison to-day, for the reason that I am so familiar with the product, having tasted it possibly several thousand times in which I have handled it, that I did not consider it necessary. With Quin-Coco I believe that that question is immaterial, as I was not requested to make the comparison, and that I am not familiar with the product other than that there is such a product in imitation and offered as a substitute for Coco-Quinine.

XQ38. Is it true that Coco-Quinine is rather largely sold in prescriptions and over the counter for children?

A. It is.

XQ39. Apparently because it is not bitter to the taste?

A. That is probably one of its advantages.

XQ40. In your answer to Q7, in referring to Quin-Coco, you said that "the salesman of the house that makes it offered it to me four or five years ago as a substitute for Coco-Quinine." At what store?

A. At my place of business, 1033 Twenty-second Street, N. W., Washington, D. C.

XQ41. Have you ever stocked the goods of Wm. R. Warner & Co., of Philadelphia?

A. Some of them.

XQ42. Who was that salesman?

A. That I am unable to inform you now. I don't remember his name.

XQ43. Might it have been longer than four or five years ago? Have you any means of approximating the date more closely?

A. From the data that I used to locate the occasion, that is approximately as close as I can state it.

XQ44. What was the data that you used?

A. It was considerably before the death of my partner and brother-in-law, who died three years ago September 9th, that we were looking over these samples together for the purpose of placing an order for

the purchase of certain specialties of Wm. R. Warner & Co., for which we had demand.

XQ45. How fully at that time did you go through that salesman line?

A. Quite extensively, and I believe that I examined practically everything that he had in his sample case. There being a number of pharmaceutical preparations along the general line of pharmaceuticals which I manufacture myself, and at which time I made comparisons of the salesman's sample with my own product.

XQ46. Mention some of those preparations of yours which you compared with his products?

A. Elixir of phosphates of iron, quinine and strychnine, U. S. P. VIII; glycerophosphates compound, no sugar is now official in N. F. IV; several elixirs N. F. III; several tinctures, U. S. P. VIII.

XQ47. Besides his line of samples, did you to any extent go through the rest of his line?

A. Only his particular specialties, for which I had demand on physicians' prescriptions.

XQ48. State what this salesman said to yor in trying to sell you his Quin-Coco. Give his exact words and your exact reply in direct statement.

A. As close as I can possibly state Quin-Coco was presented and offered as a tasteless quinine preparation, to use instead of the product of Lilly & Co., and he said it costs you much less. My reply was I use no substitutes, prices does not enter into the consideration; Coco-Quinine is a specialty of the firm of Lilly & Co., placed on the market after proper experiment and investigation on their part, and that they were entitled to reap the reward for their endeavors, and that when I received a prescription or a call for Coco-Quinine the physician and the person making the call had only one product in view, and that product was the product of Eli Lilly & Co.

XQ49. Can you now say positively after this in-

terval of four or five years that you made that long speech to the salesman, and in just the words you have now used?

A. I have purposely eliminated a portion of what I used at the time, because I consider that the language would not look well in testimony. We had quite an argument on that question.

XQ50. Did this salesman say to you that he could sell you a tasteless chocolate quinine preparation, and that it was medicinally similar to Lilly's Coco-Quinine and would sell it at a less price? Is that about what he said?

A. His statement was on presenting the sample. "Here is Coco-Quinine; we have it perfectly." That was the statement that caused a protracted argument, to which I have previously referred in answering another question.

XQ51. Of course, you knew at the time that he was a Warner salesman, and that he was not selling Coco-Quinine, Lilly, did you not?

A. He not only offered that substitute, but as my memory now serves me several other substitutes for other products. So that I almost came to the conclusion that he was offering a line of substitute products for well known pharmaceutical specialties.

XQ52. Question repeated.

A. I think I have answered that I knew he was a Warner salesman, and have stated exactly what he did.

XQ53. Did you or did you not know at the time that the preparation he was offering you was not a preparation manufactured and put on the market by Lilly?

A. That is self evident. He was selling goods for Warner & Co.

XQ54. Then when this salesman said as you have testified (in XQ50): "Here is Coco-Quinine," you understood that he meant that he had an article similar to Coco-Quinine, but not real Coco-Quinine, made by Lilly, did you not?

A. No. I definitely understood that he deliberately offered the preparation of Warner & Co., as a substitute and to be sold for Coco-Quinine.

XQ55. Did you see his labels at that time?

A. The sample from the sample case contained a small label, as I remember it. The sample was offered to me for examination, and I refused even to take the sample and look at it, so that I am unable to state exactly how it was labelled.

XQ56. I show you the pint bottle of Warner's Quin-Coco. Does that remind you of the label the salesman had? (Bottle shown witness was "Complainant's Exhibit, Bottle No. 5.")

A. That was not the package, or anything like it. The sample exhibited was from a salesman's sample case, the bottle being the ordinary homeopathic sample vial, probably holding about two fluid ounces.

XQ57. Had it a label?

A. I testified a moment ago that my recollection is that it had a label of some kind on it, and I further testified that I refused to examine the package and could not state how it was labelled.

XQ58. Was the name Quin-Coco mentioned between you in this talk?

A. It was not, as I remember.

XQ59. How long did that controversy over this article last?

A. If my memory serves me correctly, very near thirty minutes. We had several controversies in discussing various products, and I am of the opinion now that the salesman was in my store for at least two hours.

XQ60. How long did the controversy over Quin-Coco last?

A. The previous answer will show.

XQ61. I venture to ask you to answer it again.

A. I have testified to about thirty minutes.

XQ62. But you said that you did not talk all that time about Quin-Coco, did you not?

A. I did.

XQ63. And therefore, I now ask you how long you talked about Quin-Coco?

A. I again testify that I stated that we discussed that question about thirty minutes, and that the entire interview lasted about two hours.

XQ64. What did the salesman state as to the nature or composition of the preparation he was then offering you? I mean the tasteless quinine preparation.

A. As close as I can remember his statement was to the effect that it had all of the properties of Coco-Quinine, and why pay the price. This started the argument.

XQ65. And I think you have said that at that interview this salesman offered you a number of other Warner articles, which were in competition with articles of similar medicinal value made by other houses, and pressed them on your attention. Is that correct?

A. That is as I remember it.

XQ66. Might there have been a dozen of such other articles?

A. I would not like to state the number of such articles, for the reason that after our argument on this particular preparation he pursued different tactics.

XQ67. Please name some of the other articles that you had a controversy about?

A. A substitute for lapactic pills, S. & D.; a substitute for alophen pills, P. D. & Co., and I think some cascara preparation, but I cannot call that to mind at this time.

XQ68. A substitute for listerine.

A. I think there was.

XQ69. Lactopeptin, or a like article?

A. If my memory serves me correctly there was a preparation as a substitute for elixir of lactopeptin.

Mr. Bradford: I have refrained from objecting to this line of questions, hoping that it would

soon conclude, but I must interpose an objection that it is entirely improper, not being cross-examination in any sense of the word.

XQ70. Elixir salicylic comp. or any like preparation?

A. They would hardly offer me a substitute for elixir of salicylic Comp., when that is their own preparation.

XQ71. Did he offer you elixir salicylic comp.?

A. It was a perfectly legitimate offer. It was one of their preparations that I purchased at the time. It was one of their specialties, to which they are entitled to a just reward of their labors for introducing the preparation, the same as Eli Lilly & Co. are entitled to the just reward on their preparation Coco-Quinine.

XQ72. At that time had you been handling a preparation similar to the salicylic comp. of any of the other houses?

A. I have never handled anything but Warner's Elixir Calycylic Comp., and would not, because I believe firmly that that is their product, and that they are entitled to all the business on that product and when that product is demanded I know of no other product than Warner & Co.

XQ73. You mean then that when the Warner product is called for you know no other?

A. I know of no other product than the product of the manufacturer who makes a specialty when that product is called for.

XQ74. But you know that Parke, Davis, Lilly, Mumford, Sharp & Dohme, Wyeth and Wampole all market a preparation similar to elixir salicylic comp.?

A. I do not. I know only Warner's preparation, or as far as I can recollect I never heard of the others.

Mr. Rawle: Mr. Rawle moves to strike out so much of the deposition of this witness as is other than of an expert nature, upon the ground that no

notice has been given of the calling of this witness on facts, but only as an expert, and because the evidence on facts that he has given is inadmissible at this time, and repeats the motion to strike out.

Re-direct-examination.

By Mr. Bradford:

RDQ75. In taking medicine, does a person hold it in the mouth more than thirty seconds? I refer, of course, to medicine of the character we have been considering.

A. I should say they hold it very much less than thirty seconds. The inclination is to swallow as quickly as possible, and I am of the opinion that they do so in less than ten seconds.

Deposition closed.

Sam'l L. Hilton.

IN THE
DISTRICT COURT OF THE UNITED STATES,
Eastern District of Pennsylvania.

IN EQUITY.

THE ELI LILLY & COMPANY, a Corporation,
Plaintiff,

vs.

WM. F. WARNER & CO., a Corporation,
Defendant.

District of Columbia,
City of Washington, } *ss.*

I, Charles E. Riordon, a Notary Public, within and for the District of Columbia, duly appointed Special Examiner by order of Court of record in this cause, do hereby certify that the foregoing depositions of witnesses on behalf of the plaintiff in the above

entitled cause were taken before me, pursuant to notice and agreement of counsel, as follows:

At Washington, D. C., November 7th and 8th, 1917:

Samuel H. Bell,
Ellis Walker Howard,
R. H. Greene,
W. R. Bell,
Edmond Francis O'Connell.

At Indianapolis, Ind., December 3d, 4th and 5th, 1917:

James H. Beal,
Charles E. Caspari,
J. B. Weldon,
F. C. Atkinson,
Andrew L. Winton,
Francis Bibbins,
Samuel L. Hilton,

that each of said witnesses was by me first duly sworn in accordance with the law, before the commencement of his testimony; that the testimony of said witnesses was reduced to writing by myself upon a typewriting machine from the dictation of said witnesses; that the examination of said witnesses was conducted by Mr. E. W. Bradford, attorney for plaintiff, and by Mr. Francis Rawle, attorney for defendant, as appears in the record; that the depositions of said witnesses was read over by him and signed by him in my presence; that I am not of counsel or attorney or connected by blood or marriage with either party to this cause, and that I am not interested directly or indirectly in the matter in controversy or in the result of this suit. I further certify that the exhibits placed in evidence before me in the course of examination of said witnesses were duly marked by me and in accordance with stipulation of counsel retained by the plaintiff who introduced same.

In testimony whereof I have hereunto set my hand and seal this 5th day of December, 1917.

(Seal)

CHARLES E. RIORDON,
Special Examiner.